

State of California
AIR RESOURCES BOARD

Regional Greenhouse Gas Emission Reduction Targets Pursuant to SB 375

Resolution 10-31

September 23, 2010

Agenda Item No.: 10-8-2

WHEREAS, the Legislature has enacted the Sustainable Communities and Climate Protection Act of 2008 (SB 375; Steinberg, Chapter 728, Statutes of 2008), which establishes a process for reducing greenhouse gas emissions from passenger vehicle travel through more sustainable land use and transportation planning;

WHEREAS, actions taken to achieve more sustainable land use and transportation planning can provide public health benefits through improved air quality, more communities designed to promote walking, bicycling, and outdoor recreation, and less time spent on congested roadways;

WHEREAS, SB 375 requires each of the State's 18 federally designated Metropolitan Planning Organizations (MPOs) to prepare as part of their Regional Transportation Plans (RTP) a sustainable communities strategy that sets forth a forecasted development pattern for the region which, when integrated with the transportation network and other transportation measures and policies, will reduce greenhouse gas emissions from passenger vehicles to achieve, if feasible to do so, emission reduction targets set by the Air Resources Board (ARB or the Board);

WHEREAS, to the extent that a region's sustainable communities strategy is unable to achieve the greenhouse gas emission reduction targets set by the Board, SB 375 requires affected MPOs to prepare an alternative planning strategy to show how the greenhouse gas emission reduction targets would be achieved through alternative development patterns, infrastructure, or additional transportation measures or policies;

WHEREAS, these 18 MPOs are regional agencies created by federal planning law to carry out comprehensive multimodal transportation planning and are governed by local elected officials which include city council members and members of boards of supervisors from within the region;

WHEREAS, under state law, MPOs are responsible for including sustainable communities strategies within RTPs that are consistent with federal planning law, and if an MPO does not show how its sustainable communities strategy will meet the Regional Targets, the MPO must develop a separate alternative planning strategy that is completely independent of any federal planning requirement;

WHEREAS, SB 375 requires that MPOs conduct an enhanced public process to engage local stakeholders in the development of sustainable communities strategies and alternative planning strategies, if applicable, and to develop preferred growth scenarios that are specific about the location and type of growth that is desired within the region;

WHEREAS, SB 375 requires that MPOs adopt a public participation plan for development of the sustainable communities strategy, or alternative planning strategy, if any, that includes outreach efforts to a broad range of stakeholder groups, public workshops, and public hearings on a draft strategy prior to adoption;

WHEREAS, before the enactment of SB 375, to varying degrees MPOs had done early planning to reduce passenger vehicle greenhouse gas emissions, which furthers the greenhouse gas reduction goals of SB 375 and the Global Warming Solutions Act of 2006 (AB 32; Chap. 488, Stats. 2006);

WHEREAS, part of SB 375 – section 65080(b)(2)(A) of the Government Code – directs the Board, on or before September 30, 2010, to provide each affected region with greenhouse gas emission reduction targets (Regional Targets) for the automobile and light truck sector for 2020 and 2035, respectively;

WHEREAS, the ARB has decades of experience and longstanding expertise in the areas of in vehicular emission modeling, State Implementation Plan (SIP) attainment modeling, and review of highly technical information related to air quality planning and modeling, including review of transportation components of the SIP; ARB therefore has the skills and background to review MPO-provided information and to assess the appropriateness of MPO assumptions and model results;

WHEREAS, the Regional Targets identify the overall regional greenhouse gas emission reductions to be planned for through an MPO's sustainable communities strategy, or alternative planning strategy, if applicable;

WHEREAS, while affected MPOs must develop a plan to meet the Regional Targets through a sustainable communities strategy or an alternative planning strategy, SB 375 encourages but does not require MOs to achieve their targets;

WHEREAS, successful implementation of sustainable communities strategies has the potential to provide numerous public health benefits as a result of improved community design and better air quality;

WHEREAS, section 65080(b) of the Government Code also requires ARB to appoint a Regional Targets Advisory Committee (RTAC) to recommend factors to be considered and methodologies to be used for setting Regional Targets for the affected regions;

WHEREAS, section 65080(b) of the Government Code also requires ARB to exchange technical information with affected MPOs and air districts before setting Regional Targets;

WHEREAS, section 65080(b) of the Government Code also authorizes an MPO to recommend targets for the region;

WHEREAS, SB 375 was designed to allow regions to independently determine how they will achieve Regional Targets, and limits ARB's role to acceptance or rejection of the MPO's determination that its SCS or APS would, if implemented, achieve the Board-established Regional Targets;

WHEREAS, inter-regional trips that originate or end outside MPO planning areas (e.g. interstate, international, tribal land, military base, and other trips not under MPO planning authority), raise important issues regarding an MPO's ability to reduce GHG emissions from those trips;

WHEREAS, section 65080(b) of the Government Code also requires ARB, in establishing Regional Targets, to take into account greenhouse gas emission reductions that will be achieved by improved vehicle emission standards, changes in fuel composition, and other measures it has approved that will reduce greenhouse gas emissions in the affected regions, and prospective measures the ARB plans to adopt to reduce greenhouse gas emissions from other sources;

WHEREAS, SB 375 provides ARB the flexibility to determine the appropriate technical process to use in developing proposed or adopting final Regional Targets;

WHEREAS, AB 32 requires a statewide absolute reduction of greenhouse gas emissions to 1990 levels by 2020 but specifies no required reduction from any particular source category (including transportation) and no absolute reduction from any particular source category;

WHEREAS, SB 375 exists independently of AB 32 as a means for the State to reduce greenhouse gas emissions from the transportation sector in combination with other related measures and regulations the Board has approved and will consider for fuels and vehicles;

WHEREAS, SB 375 provides ARB the flexibility to specify what, if any, criterion a chosen, expressed Regional Target metric is to be measured against;

WHEREAS, section 65080(b) of the Government Code also requires ARB to update the Regional Targets at least every eight years and provides that the Board may revise the Regional Targets every four years; prior to updating targets ARB must exchange technical information with the Department of Transportation, metropolitan planning organizations, local governments, and affected air districts and engage in a consultative process with public and private stakeholders;

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Board to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, AB 32 directed the Board to set a greenhouse gas emission limit equivalent to 1990 levels to be achieved by 2020, to adopt a Scoping Plan to meet that limit, and to adopt greenhouse gas emission limits and emission reduction measures to meet that limit; the Board adopted the limit in 2007;

WHEREAS, in 2008 the Board adopted the Climate Change Scoping Plan, which identifies emission reduction measures for sources and categories of sources the Board finds necessary or desirable to facilitate the achievement of the maximum technologically feasible and cost-effective reductions of greenhouse gas emissions by 2020;

WHEREAS, the 2008 Climate Change Scoping Plan identifies SB 375 as one measure for reducing greenhouse gas emissions from the transportation sector, and ARB's Climate Change Scoping Plan Resolution 08-47 states the Board's intent that estimated reductions in the Climate Change Scoping Plan from SB 375 will be adjusted to reflect the outcome of the Board's decision on Regional Targets;

WHEREAS, the potential greenhouse gas emission reductions from the transportation and land use sector that were identified nearly two years ago in the Climate Change Scoping Plan, and the information provided by the MPOs to ARB including recommended target levels, are both useful but not determinative guidance for setting Regional Targets;

WHEREAS, the Board is not bound or limited by AB 32 in establishing the Regional Target levels pursuant to SB 375;

WHEREAS, the Regional Targets are part of the Scoping Plan's integrated approach to reducing greenhouse gas emissions from the transportation sector, along with implementation of other measures including but not limited to a low carbon fuel standard and passenger vehicle emissions standards;

WHEREAS, setting Regional Targets under SB 375 is an initial step to reducing vehicular greenhouse gas emissions but it is only one part of the statewide effort to achieve overall greenhouse gas emissions reductions from the transportation sector by 2020 and beyond;

WHEREAS, in preparing the Proposed Targets, ARB staff considered advice and input from the RTAC, composed of individuals with a mix of expertise and experience in local land use planning, regional transportation planning, travel modeling, environmental resource protection and social equity, and selected from metropolitan planning

organizations, local transportation agencies, air districts, the League of California Cities, the California State Association of Counties, and other advocacy organizations involved with planning, the environment, environmental justice, and affordable housing;

WHEREAS, the RTAC extensively reviewed and discussed relevant issues, including data needs, modeling techniques, growth forecasts, impacts of regional jobs-housing balance on interregional travel and greenhouse gas emissions, economic and demographic trends, the magnitude of greenhouse gas reduction benefits from a variety of land use and transportation strategies, and appropriate methods to describe Regional Targets and to monitor performance in attaining those targets;

WHEREAS, the RTAC recommended factors to be considered and methodologies to be used for setting greenhouse gas emission reduction targets and by consensus recommended a collaborative approach (also referred to by the RTAC as a "bottom-up approach") to target-setting as a sound analytical method that relies on modeled outputs and planning scenarios developed by the MPOs which are responsible for the planning requirements of SB 375, provides the ability to estimate the aggregate impacts of implementing multiple land use and transportation policies and practices, encourages regional and statewide model transparency and consistency, and promotes a successful target setting process through collaboration and interaction with local governments, the public, air districts, other state agencies, and transportation and land use experts;

WHEREAS, section 65080(b)(2)(A)(v) of the Government Code authorizes ARB to express Regional Targets in gross tons, tons per capita, tons per household, or in any other metric deemed appropriate by the Board;

WHEREAS, the RTAC recommended that Regional Targets be expressed as a percent reduction in per capita greenhouse gas emissions from a 2005 base year, explaining that this metric is easily understood by the public, can be developed with currently available data, and is a metric widely used by MPOs today;

WHEREAS, the RTAC discussed the advantages and disadvantages of MPOs meeting their Regional Targets through sustainable communities strategies as compared to alternative planning strategies, and expressed a preference for MPOs to meet their Regional Targets with a sustainable communities strategy rather than an alternative planning strategy;

WHEREAS, in May 2010 ARB staff held a public workshop to provide a status report on the target setting process;

WHEREAS, in June 2010 ARB staff prepared and circulated for public review *Draft Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375* (Draft Targets) in accordance with the requirements set forth in Government Code section 65080 (b); staff then held seven public workshops in July 2010 to discuss the Draft Targets, during and after which staff considered public comments received on the Draft Targets as well as additional MPO data received;

WHEREAS, on July 23, 2010, the San Diego Association of Governments (SANDAG) Board took action to recommend Regional Targets of 7 percent per capita reduction by 2020 and 13 percent per capita reduction by 2035 for its region;

WHEREAS, on July 28, 2010, the Metropolitan Transportation Commission (MTC) Board took action to recommend Regional Targets of 7 percent per capita reduction by 2020 and 15 percent per capita reduction by 2035 for its region;

WHEREAS, in August 2010 ARB staff prepared and circulated for public review *Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375* (Proposed Targets) as shown in Attachment A, Tables 1-5 and pages 34-37;

WHEREAS, on August 19, 2010, the Sacramento Area Council of Governments (SACOG) Board took action to recommend Regional Targets of 7 percent per capita reduction by 2020 and 16 percent per capita reduction by 2035 for its region;

WHEREAS, on September 2, 2010, the Southern California Association of Governments (SCAG) Regional Council took action to recommend Regional Targets of 6 percent per capita reduction by 2020 and 8 percent per capita reduction by 2035 for its region, and identified 11 recommendations which, if accepted by ARB, would provide the basis for ARB and SCAG to renegotiate higher targets;

WHEREAS, there are eight MPOs in the San Joaquin Valley that have been coordinating their target setting efforts and are considering the opportunity to jointly develop sustainable communities strategies, as permitted under the law; these eight MPOs have just completed their RTP updates and will not update their RTPs until 2014; and the San Joaquin Valley Air Pollution Control District has developed an approach for these MPOs to work together and to recommend Regional Targets;

WHEREAS, in developing both the Draft Targets and Proposed Targets, ARB staff:
A) collaborated extensively with the MPOs, reviewed the information provided by the MPOs (including the information identified above) regarding data, assumptions, travel models, and planning scenarios; B) made all of the target-setting data and information submitted by the MPOs publicly available by posting it on the ARB website; C) exercised their independent judgment to determine that the collaborative approach was a reasonable and appropriate method for target-setting, and D) determined that MPOs had provided substantial baseline data, forecasts, planning scenarios and modeled outputs to support that target-setting method;

WHEREAS, SB 732 (Chap. 729, Stats. 2008) established the Strategic Growth Council composed of agency heads including the California Environmental Protection Agency Secretary, to better coordinate member agencies' natural resource, housing, transportation, promote sustainable land use planning efforts, and award funding for sustainable communities planning efforts, including SCS and APS development and

other planning efforts to reduce greenhouse gas emissions toward meeting AB 32 goals, and Board staff has been involved in the Council's efforts;

WHEREAS, the California Environmental Quality Act (CEQA) and Board regulations require that no project which may have significant adverse environmental impacts may be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, the nature and extent of specific environmental impacts from the Proposed Targets are difficult to predict at this stage, but MPOs and other agencies responsible for transportation planning and projects will be better situated to analyze the potential impacts of plans and measures they adopt to achieve the Regional Targets;

WHEREAS, CEQA allows public agencies to prepare a plan or other written documentation in lieu of an environmental impact report (i.e., functional equivalent environmental document), once the Secretary of the Resources Agency has certified an agency's program pursuant to section 21080.5 of the Public Resources Code;

WHEREAS, pursuant to section 21080.5 of the Public Resources Code, the Secretary of the Resources Agency has certified that portion of ARB's program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans;

WHEREAS, the Proposed Targets, if adopted, will establish standards in the form of goals for MPOs to incorporate into their regional transportation planning processes;

WHEREAS, Board regulations under ARB's certified program provide that prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue;

WHEREAS, on August 9, 2010, ARB staff prepared and circulated for public review, in accordance with CEQA and Board regulations, a staff report and functional equivalent environmental document (see Attachment B) for the Proposed Targets;

WHEREAS in consideration of the Proposed Targets, the written and oral testimony presented by the public, industry and government agencies, the environmental documentation prepared by Board staff, and all other documents available from or linked within the ARB web page for this proposal, the Board, exercising its independent judgment, finds that the target-setting approach used by staff to develop Proposed Targets necessarily and appropriately:

1. Followed a collaborative process, using information generated by the 18 MPOs and the local governments that constitute them, taking advantage of the expertise of the MPOs in developing baseline information and growth projections;

2. Relied on technically sound methodologies that use information from current data sets and models. The MPO scenarios constitute the best available results from region-specific modeling of policies that may be employed to meet Regional Targets and to provide the appropriate technical grounding for the first set of Regional Targets;
3. Relied on the best available tools for forecasting and predicting changes in land use patterns and transportation systems. The regional models used are the most current, are region-specific, and have been used to meet other State and federal requirements;
4. Builds upon locally generated strategies and policies and judgments about post-2020 deployment levels for many land use, transportation, housing and pricing strategies that will be developed at the local and regional levels as part of the RTP planning process;
5. Creates the framework for future updates of the Regional Targets, recognizing that new information and improved travel models will become available over time; and
6. Extensively involved the participation of the public, stakeholders and other interested parties through the use of meetings, public workshops, comment websites and web posting of all target-setting data and information MPOs provided to ARB staff.

WHEREAS, the Board also finds that:

7. Successful implementation of the Proposed Targets will require resources for land use and transportation planning, provision of transit and other transportation options, and development of infrastructure necessary for sustainable community development;
8. Sustainable community designs which promote walking, bicycling, outdoor recreation opportunities, and less traffic congestion can provide air quality and public health benefits;
9. Resources for land use and transportation planning and implementation have been severely reduced as a result of the recent recession, including multiple years of budget reductions that have severely reduced available funding for sustainable community planning, including transit system improvements and redevelopment of urban areas;
10. Regional and local governments need supportive action from the state and federal governments including commitment of financial and other resources and incentives;

11. Using a metric of percent reduction in per capita greenhouse gas emissions from 2005 levels for the Proposed Targets is appropriate because it recognizes that different MPO regions will experience different growth rates;
 12. Using a per capita metric for the Proposed Targets from a 2005 base year is appropriate because it gives regions credit for early actions taken to reduce greenhouse gas emissions since 2005;
 13. The Proposed Targets will result in fewer emissions in 2020 and in 2035 compared to what is forecast in the absence of local and regional measures to meet the Proposed Targets, and these reductions will contribute, but not be sufficient alone, to meet statewide commitments to reduce greenhouse gas emissions by 2020 and beyond;
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14. The combined effect of the Proposed Targets, together with improved vehicle emission standards and low carbon fuel standard adopted by the Board, will result in substantial greenhouse gas reductions from the transportation sector;
 15. The Proposed Targets meet the objectives set forth in AB 32 and SB 375, specifically they would, if implemented, result in incremental and progressive reductions in greenhouse gas emissions from the transportation sector over the next 25 years, and thereby contribute to the overall statewide reduction goal for 2020 and beyond;
 16. The Proposed Targets advance the objective of Measure T-3 in the Scoping Plan to reduce greenhouse gas emissions from changed land-use patterns and improved transportation strategies;
 17. The Proposed Targets will help move the regions away from business-as-usual planning practices and toward more sustainable planning policies;
 18. Closely coordinating with the Strategic Growth Council can appropriately assist the Council in funding critical planning tools and resources for MPO implementation of the Proposed Targets, including tools for modeling and quantifying co-benefits of changed land-use patterns and improved transportation strategies;
 19. Travel models used by MPOs are undergoing improvement and evolution, so that these models will eventually be able to demonstrate more precisely the effects of land use and transportation policy choices on greenhouse gas emission outcomes in future target setting cycles;
 20. The capability of the regional travel models to accurately assess the effects of policy choices on greenhouse gas emissions is critical to the success of SB

375 and that ARB staff must continue to work with MPOs to strengthen their models;

21. It must continue working with regional planning agencies, local governments and other state agencies to further strengthen the technical underpinnings of SB 375, including advancement of technical information and tools such as consistent standards for data and modeling assumptions, model improvements, and measures of achievement of emission reductions;
 22. In reviewing an MPO's determination that its SCS or APS would, if implemented, achieve the Proposed Targets, it is appropriate to consider providing different treatment for inter-regional trips that originate or end outside MPO planning areas (e.g. interstate, international, tribal land, military base, and other trips not under MPO planning authority);
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WHEREAS, the Board finds that ongoing work by the eight San Joaquin Valley MPOs may produce new information that will inform the potential for greenhouse gas reduction in those regions, including improved data and travel models that will increase their modeling capabilities, potential development of alternative target setting scenarios, and exploration of multi-region coordination on sustainable communities strategy development;

WHEREAS, pursuant to the requirements of CEQA and Board regulations under its certified regulatory program, the Board further finds that:

23. MPOs may employ such a wide variety of policies, strategies, and measures to achieve the Regional Targets that it would be highly speculative at this time to analyze the potential adverse environmental impacts of a particular policy, strategy, or measure in any specific location in the state;
24. ARB staff prepared a functional equivalent environmental document for the adoption of Proposed Targets which indicates that there may be potential adverse environmental impacts as identified in Attachment B (pp. 13-16) from the implementation of the Proposed Targets at the regional and local levels; however, these impacts are speculative and cannot be quantified or further described until the details of future implementation strategies are developed and set forth in a sustainable communities strategy or alternative planning strategy;
25. While data and information is available regarding the environmental resources within California that might be affected by any number of potential land use and transportation patterns that might result from future implementation of the Proposed Targets, it is infeasible for ARB to identify and assess the environmental impacts of the innumerable potential combinations of greenhouse gas reduction strategies and land use patterns that might be employed to meet the Proposed Targets;

26. The Board has considered alternatives to the Proposed Targets, as identified in the functional equivalent environmental document (Attachment B, pp. 19-23), and

- a. The Board rejects the No Project Alternative 1 because it does not meet project objectives and could result in greater environmental impacts because there would be no state goals for reducing greenhouse gas emissions from passenger vehicle travel;
- b. The Board rejects Alternative 2 (increasing Proposed Targets substantially) because if implemented it is likely to result in more of the potential adverse impacts identified in Attachment B;
- c. The Board rejects Alternative 3 (decreasing Proposed Targets substantially) because it would not sufficiently promote the underlying goals and objectives of the project to set targets that will achieve significant greenhouse gas reductions from changed land use and transportation patterns and policies, and because it presents an unacceptably high risk of increased impacts from use of CEQA exemptions and exceptions related to SB 375 and other environmental impacts to wildlife and agricultural lands;
- d. The Board rejects Alternative 4 (using a total emissions metric) as not clearly providing more or fewer emission reductions and because it is not responsive to changes in planning assumptions and could result in unfair distribution of burden for reducing emissions; and
- e. The Board rejects Alternative 5 (using a vehicle miles traveled reduction metric) because it may not meet project objectives because a VMT metric may not translate directly into desired emission reductions;

Therefore the Board has identified no feasible alternatives at this time that would substantially reduce or eliminate any potentially significant adverse environmental impacts;

27. Though ARB has identified general types of mitigation measures that could minimize each general project-level impact identified (Attachment B, pp. 16-19), because ARB has no authority to implement these measures either statewide or at the local level – such measures are exclusively within the responsibility and jurisdiction of regional and local public agencies – it is not feasible for ARB to adopt mitigation measures to substantially reduce or eliminate the potential adverse environmental impacts of the Proposed Targets;

28. The range of potential adverse environmental impacts of the Proposed Targets (as modified by the Board) that may occur when MPO and local agency target implementation occurs are outweighed by the substantial reduction in greenhouse gas emissions and related public benefits that will result from their adoption and implementation;
29. These related public benefits are mentioned or described in the 2008 Climate Change Scoping Plan, the 2009 RTAC report, and the August 9, 2010 CEQA functional equivalent environmental document and include: increased mobility, diversity of housing options, economic benefits including cost savings from reduced energy demand, reduced air and water pollution, conservation of open space and farmland, and healthier, more equitable communities;
30. As regional sustainable communities strategies and alternative planning strategies are developed by the MPOs, detailed environmental impact analyses of the region-specific strategies that will be used by the MPO to achieve the Proposed Targets, including discussion of the nature and extent of specific environmental impacts of plans and measures, and of alternatives and mitigation measures, must be performed by the MPOs as part of the normal RTP development and adoption process pursuant to CEQA. In accordance with Public Resources Code Section 21081(a)(2), region-specific analyses of the potential adverse environmental impacts and feasible mitigation of significant impacts are needed when each MPO prepares its sustainable communities strategy or alternative planning strategy, and project-level analysis and mitigation may also be required when specific projects, not otherwise exempt, are considered. A list of agencies currently responsible for a sustainable communities strategy or alternative planning strategy preparation and implementation is included in Attachment C;
31. The considerations identified above override any potentially significant adverse environmental impacts that may occur from adoption and implementation of the Proposed Targets (as modified by the Board), and the Board therefore considers any such impacts acceptable;
32. The functional equivalent environmental document is not intended to relieve the MPOs of any responsibility under CEQA to perform independent, region-specific impact analysis of their sustainable communities strategies and the effects of implementing the policy choices contained within those strategies;
33. It is appropriate for the Executive Officer to serve as the decision maker for the purpose of taking final action to adopt the Regional Targets and providing written responses to environmental issues raised on the Proposed Targets, and by approving this Resolution 10-31 the Board is not predetermining any

the responses that will be made by the Executive Officer to these environmental issues.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of the Proposed Targets for automobiles and light trucks pursuant to SB 375 as set forth in Attachment A hereto, with the following modifications;

The 13% reduction for Southern California Association of Governments (SCAG) for 2035 is conditioned on discussions occurring between ARB and SCAG regarding SCAG's 11 recommendations of September 2, 2010, with said discussions to occur before the Board's regularly scheduled February 2011 meeting and with the results of those discussions (including potentially different ARB staff-recommended targets) to be presented to the Board at the February 2011 meeting;

The Tahoe Regional Planning Agency 2035 target is a five percent decrease;

The Association of Monterey Bay Area Governments' 2020 target is zero (no increase or decrease), and its 2035 target is a five percent decrease;

The Santa Barbara County Association of Governments' 2020 and 2035 targets are each zero (no increase or decrease).

BE IT FURTHER RESOLVED that the Board hereby finds that the approved Regional Targets will further the State of California's greenhouse gas reduction goals for 2020 and beyond; and meets the intent of SB 375 to encourage more sustainable regional planning.

BE IT FURTHER RESOLVED that the Board strongly encourages MPOs to prepare and adopt sustainable communities strategies that achieve the Regional Targets, and to consider and maximize the public health co-benefits of implementing a sustainable communities strategy.

BE IT FURTHER RESOLVED that the Board encourages MPOs to recognize the potential of sustainable communities strategies to result in multiple public benefits, including but not limited to improved air quality and public health, lower household travel costs, improved fit between wages and housing costs, and reduced pressure to develop open space and agricultural lands; and to consider the adoption of performance indicators which can be used by the MPOs to assess the effectiveness of their plans in achieving the Regional Targets.

BE IT FURTHER RESOLVED that the Board intends that the Regional Targets be used to guide regional planning processes and not to judge the environmental impact of any particular project.

BE IT FURTHER RESOLVED that the Regional Targets approved herein set an overall regional target for each of the years 2020 and 2035 but do not express or imply a greenhouse gas reduction target or goal for any particular project.

BE IT FURTHER RESOLVED that in approving the adoption of these Regional Targets for the eight San Joaquin Valley MPOs the Board anticipates actions by these MPOs to improve their data, modeling and target setting scenarios prior to the development of their respective regional transportation plans which are due in 2014. The approved targets would be replaced by future Board action with revised targets that incorporate expected model improvements and further scenario development efforts by the eight Valley MPOs.

BE IT FURTHER RESOLVED that the Board requests from staff an informational update in 2012 to (1) identify progress made by San Joaquin Valley MPOs to improve data and models, (2) consider new target-setting recommendations from Valley MPOs if appropriate, and (3) discuss the need for setting new targets in 2014 to reflect new data, modeling improvements, or other information relevant to targets for the eight Valley MPOs. As part of this 2012 update, the Board will receive reports on any model improvements for the San Joaquin Valley; and discuss the progress the San Joaquin Valley MPOs have made in coordinating their planning efforts, improving the available data, building their modeling capability, addressing residential and employment growth patterns, and exploring alternative target setting scenarios. Also as part of the 2012 update, the San Joaquin Valley MPOs would be asked to provide an update on their efforts, and if available, provide regional target recommendations based on any new modeling and scenario information. The 2012 update should also include a report by the San Joaquin Valley MPOs regarding how they intend to address the statutory option to work together to develop one or more multi-county Sustainable Communities Strategies.

BE IT FURTHER RESOLVED that the Board intends to specify provisional targets for the San Joaquin Valley in 2012 that, if appropriate, would be formally considered for adoption in 2014. The provisional targets, if established after the 2012 informational update, would be identified for use in developing the San Joaquin Valley's 2014 regional transportation plans unless the 2012 update indicates that the targets remain appropriate.

BE IT FURTHER RESOLVED that the Board directs staff to continue to support and participate in MPO efforts to develop performance indicators for greenhouse gas reduction strategies, to improve modeling capabilities, to develop consistent assumptions for modeling, and to account for modeling improvements when characterizing the benefits of strategies to reduce greenhouse gas emissions.

BE IT FURTHER RESOLVED that the Board requests from staff an update every four years to (1) review target implementation progress, and (2) discuss the need for setting new targets to reflect new data, modeling improvements, or other information relevant to targets. As part of this update, the Board will receive a report on the levels and effect of

federal, state, regional, and local funding for transportation planning, infrastructure, and operations.

BE IT FURTHER RESOLVED that the Board directs staff, to consider, as appropriate, different treatment for inter-regional trips that originate or end outside MPO planning areas (e.g. interstate, international, tribal land, military base, and other trips not under MPO planning authority) when determining whether an SCS or APS would, if implemented, achieve the approved Regional Target.

BE IT FURTHER RESOLVED that the Board directs staff to encourage development and funding of research projects to improve understanding of the relationship between greenhouse gas reductions and public health, equity, and resource conservation outcomes;

BE IT FURTHER RESOLVED that the Board directs staff to continue working with regional planning agencies, local governments and other State agencies, including the Strategic Growth Council, to ensure that updated information and tools further strengthen and improve modeling techniques and model results in preparation for future review and revision of Regional Targets every four or eight years, as permitted by law.

BE IT FURTHER RESOLVED that the Board directs staff to continue working with the California Transportation Commission to update state guidelines for travel demand models used in the development of regional transportation plans.

BE IT FURTHER RESOLVED that the Board will review and revise the Regional Targets as necessary and appropriate at the next available opportunity authorized by law, with the intent of applying new data, information, forecasts, and models and other appropriate tools in the future development of revised targets.

BE IT FURTHER RESOLVED that the Board commits to work with local governments, MPOs, state agencies, and the Legislature to identify, pursue and secure adequate incentives and sustainable sources of funding for regional and local planning and other activities related to the implementation of SB 375.

BE IT FURTHER RESOLVED that the Board directs staff to work with other state agencies and the MPOs to track available resources for implementation of SB 375.

BE IT FURTHER RESOLVED that the Executive Officer is the decision maker for the purposes of Title 17, California Code of Regulations, section 60007; the Board directs the Executive Officer to prepare and approve written responses to all significant environmental issues that have been raised, and then to either: (1) return to the Board for further consideration of the Regional Targets; or (2) take final action to certify the final functional equivalent environmental document, including written responses to comments raising significant environmental issues, and adopt the Regional Targets, any conforming modifications that may be appropriate, and any modifications that are necessary to ensure that all feasible mitigation measures or feasible alternatives that

would substantially reduce any significant adverse environmental impacts have been incorporated into the final action.

BE IT FURTHER RESOLVED, the Executive Officer may consolidate responses to comments on the functional equivalent environmental document in one or more supplemental written reports.

BE IT FURTHER RESOLVED that once final action has been taken by the Executive Officer to adopt the Regional Targets the Board directs the Executive Officer to make the adopted Regional Targets available to the public.

I hereby certify that the above is a true and correct copy of Resolution 10-31, as adopted by the Air Resources Board.



Mary Alice Morency, Clerk of the Board

Resolution 10-31

September 23, 2010

Identification of Attachments to the Resolution

- Attachment A:** Staff Report, Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, released August 9, 2010
- Attachment B:** Draft CEQA Functional Equivalent Document, SCH # 2010081021, for Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, released August 9, 2010
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- Attachment C:** List of Responsible Agencies Provided Pursuant to Cal. Public Resources Code Section 21081(a)(2) and Title 14, California Code of Regulations, Sections 15091(a)(2)

Attachment A

Staff Report, Proposed Regional Greenhouse Gas Emission Reduction Targets for
Automobiles and Light Trucks Pursuant to Senate Bill 375, released August 9, 2010

Attachment B

Draft CEQA Functional Equivalent Document, SCH # 2010081021, for Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, released August 9, 2010

Attachment C

List of Responsible Agencies Provided Pursuant to
Cal. Public Resources Code Section 21081(a)(2) and
Title 14, California Code of Regulations, Section 15091(a)(2)

**List of Agencies Responsible for Preparation and Adoption of a
Sustainable Communities Strategy or an Alternative Planning Strategy
Pursuant to SB 375**

California Metropolitan Planning Organizations (MPOs):

AMBAG	Association of Monterey Bay Area Governments
BCAG	Butte County Association of Governments
COFCG	Council of Fresno County Governments
KCAG	Kings County Association of Governments
KCOG	Kern Council of Governments
MCAG	Merced County Association of Governments
MCTC	Madera County Transportation Commission
MTC	Metropolitan Transportation Commission
SACOG	Sacramento Area Council of Governments
SANDAG	San Diego Association of Governments
SBCAG	Santa Barbara County Association of Governments
SCRTPA	Shasta County Regional Transportation Planning Agency
SCAG	Southern California Association of Governments
SJCOG	San Joaquin Council of Governments
SLOCOG	San Luis Obispo Council of Governments
STANCOG	Stanislaus Council of Governments
TCAG	Tulare County Association of Governments
TMPO	Tahoe Metropolitan Planning Organization

LOCATION:

Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

PUBLIC MEETING AGENDA

February 24, 2011

This facility is accessible by public transit. For transit information, call (916) 321-BUSS, website: <http://www.sacrt.com>
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**TO SUBMIT WRITTEN COMMENTS ON AN
AGENDA ITEM IN ADVANCE OF THE MEETING GO
TO: <http://www.arb.ca.gov/lispub/comm/bclist.php>**

February 24, 2011

9:00 a.m.

DISCUSSION ITEM:

Note: The following agenda item will be the first item discussed at the Board meeting.

11-1-2: Joint Meeting of the Air Resources Board and its Research Screening Committee to Discuss the Air Resources Board's Research Planning Process

Staff will brief the Board on the implementation of the Air Resources Board's 2003-2010 Strategic Plan for Research. The Board will discuss with the Research Screening Committee members potential research priorities over the next 5-10 years, and also discuss opportunities to influence research programs at academic institutions and other government agencies.

CONSENT CALENDAR:

This consent calendar will be voted on by the Board immediately after the first item is completed. Any item may be removed from the consent calendar by a Board member or by someone in the audience who would like to speak on that item. The following items are on the consent calendar:

Consent Item #

11-1-1: Public Meeting to Consider Seventeen Research Proposals

1. "Synthesis of Policy Relevant Findings from the CalNex 2010 Field Study," National Oceanic and Atmospheric Administration, Proposal No. 2716-269
2. "Air Movement as an Energy Efficient Means Toward Occupant Comfort," University of California, Berkeley, Proposal No. 2705-269.
3. "Using Feedback from Commercial Buildings to Support Energy Conserving Behavior at Work and Beyond," University of California, Berkeley, Proposal No. 2713-269.
4. "Understanding Primary Organic Aerosol Volatility at Atmospherically Realistic Concentrations for SIP Analysis," University of California, Davis, Proposal No. 2708-269.
5. "Persistent Immune Effects of Wildfire Particulate Matter Exposure During Childhood Development," University of California, Davis, Proposal No. 2715-269.

6. *"Location Specific Systemic Health Effects of Ambient Particulate Matter," University of California, Davis, Proposal No. 2706-269.*
7. *"Extended Analysis of the CARES Aerosol Chemistry Data to Characterize Sources and Processes of Organic Aerosol in the Sacramento Valley of California," University of California, Davis, Proposal No. 2712-269.*
8. *"Behavioral Responses to Real-Time Individual Energy Usage Information: A Large Scale Experiment," University of California, Los Angeles, Proposal No. 2714-269.*
9. *"Probing the Intrinsic Ability of Particles to Generate Reactive Oxygen Species and the Effect of Physiologically Relevant Solutes," University of California, Los Angeles, Proposal No. 2711-269.*
10. *"Construction of a DOAS Instrument for Installation at the Air Resources Board for the Low Level Measurement of SO₂ to Investigate the Relation Between SO₂ and Sulfate," University of California, Riverside, Proposal No. 2710-269.*
11. *"Development of a Portable In-Use Reference Particulate Matter Measurement System," University of California, Riverside, Proposal No. 2709-269.*
12. *"Calibrating, Validating, and Implementing Process Models for California Agriculture Greenhouse Gas Emissions," University of New Hampshire, Proposal No. 2707-269.*
13. *"Risk of Pediatric Asthma Morbidity from Multipollutant Exposures," University of California, Irvine, Proposal No. 2717-270.*
14. *"Residential Energy Use and Greenhouse Gas Emissions Impacts of Compact Land Use Types," University of California, Berkeley, Proposal No. 2719-270.*
15. *"The Cool California Carbon Challenge: a Pilot Intra- and Inter-Community Carbon Footprint Reduction Competition," University of California, Berkeley, Proposal No. 2718-270.*
16. *"Evaluation of Pollutant Emissions from Portable Air Cleaners," Lawrence Berkeley National Laboratory, Proposal No. 2721-270.*
17. *"Developing Databases to Estimate California-Specific Climate Forcing Benefits of Cool Roofs," Lawrence Berkeley National Laboratory, Proposal No. 2720-270.*

Attached are the Proposed Resolutions for the above consent items. Please go to <http://www.arb.ca.gov/board/ma/2011/ma022411.htm> for resolution attachments.

DISCUSSION ITEMS:

Note: The following agenda items may be heard in a different order at the Board meeting.

Agenda Item #

11-1-3: Public Meeting to Hear a Report on the Air Resources Board's Program Priorities for 2011

Executive Officer James Goldstene will present to the Board a preview of anticipated Board activities in 2011.

11-1-4: Public Meeting to Hear a Report on the Office of the Ombudsman

Staff will update the Board on the implementation of the business plan for the Office of the Ombudsman and enhanced communication and stakeholder engagement, with emphasis on California small businesses.

11-1-5: Public Meeting to Provide an Update on Discussions with the Southern California Association of Governments Concerning its 2035 Regional Greenhouse Gas Emissions Reduction Target

As directed by the Board, staff will provide an update on discussions with the Southern California Association of Governments (SCAG) regarding SCAG's regional greenhouse gas reduction target for 2035.

CLOSED SESSION – LITIGATION

The Board will hold a closed session, as authorized by Government Code section 11126(e), to confer with, and receive advice from, its legal counsel regarding the following pending or potential litigation:

Pacific Merchant Shipping Association v. Goldstene, U.S. District Court (E.D. Cal. Sacramento), Case No. 2:09-CV-01151-MCE-EFB.

POET, LLC, et al. v. Goldstene, et al., Superior Court of California (Fresno County), Case No. 09CECG04850.

Rocky Mountain Farmers Union, et al. v. Goldstene, U.S. District Court (E.D. Cal. Fresno), Case No. 1:09-CV-02234-LJO-DLB.

National Petrochemical & Refiners Association, et al. v. Goldstene, et al., U.S. District Court (E.D. Cal. Fresno) Case No. 1:10-CV-00163-AWI-GSA.

Association of Irrigated Residents, et al. v. California Air Resources Board, Superior Court of California (San Francisco County), Case No. CPF-09-509562.

Association of Irrigated Residents, et al. v. U.S. E.P.A., 2011 WL 310357 (C.A.9), (Feb. 2, 2011)

California Dump Truck Owners Association v. California Air Resources Board, U.S. District Court (E.D. Cal. Sacramento) Case No. 2:11-CV-00384-MCE-GGH

OPPORTUNITY FOR MEMBERS OF THE BOARD TO COMMENT ON MATTERS OF INTEREST

Board members may identify matters they would like to have noticed for consideration at future meetings and comment on topics of interest; no formal action on these topics will be taken without further notice.

OPEN SESSION TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD ON SUBJECT MATTERS WITHIN THE JURISDICTION OF THE BOARD

Although no formal Board action may be taken, the Board is allowing an opportunity to interested members of the public to address the Board on items of interest that are within the Board's jurisdiction, but do not specifically appear on the agenda. Each person will be allowed a maximum of three minutes to ensure that everyone has a chance to speak.

TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO:

<http://www.arb.ca.gov/lispub/comm/bclist.php>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE CLERK OF THE BOARD:

OFFICE: (916) 322-5594

1001 I Street, Floor 23, Sacramento, California 95814

ARB Homepage: www.arb.ca.gov

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia;
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma;
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

SMOKING IS NOT PERMITTED AT MEETINGS OF THE CALIFORNIA AIR RESOURCES BOARD

**ARB Responses to Public Comments
on the Functional Equivalent Document (FED)
for the Proposed SB 375 Regional Targets**

(SCH# 2010081021)

February 14, 2011

Introduction

This document has been prepared to comply with ARB regulations set forth in Title 17, California Code of Regulations, section 60007, which requires ARB, or here the Executive Officer as the Board's delegated decision maker, to respond in writing to all comments raising significant environmental issues that are made on a proposed ARB action.

This document summarizes and responds to public comments submitted on the environmental analysis prepared by Air Resources Board (ARB or Board) staff for the Proposed SB 375 Regional Greenhouse Gas Reduction Targets (Proposed Targets or Regional Targets). Staff's environmental analysis is set forth in the California Environmental Quality Act Functional Equivalent Document (FED) published on August 9, 2010.

The public comment period for both the Proposed Targets and the associated FED began with the release of the Staff Report and FED on August 9, 2010, and ended with the close of public testimony at the Board's September 23, 2010 public hearing. For completeness, this document addresses all comments on the FED received by ARB during the public comment period, including through the September 23 public hearing, that ARB staff determined raised significant environmental issues. These comments are from two letters, one of which was specifically directed to the FED internet address per the public notice, and one of which was directed to the Proposed Target internet address but which ARB staff determined to contain comments on the FED.

There were no comments submitted on the FED after the close of the public comment period.

Summaries of Public Comments and ARB Responses

Presented below are the two public comment letters ARB received on the proposed project that raise significant environmental issues. These two commenters submitted comments on the FED and the proposed targets. They are identified below with the date of the comment, the form of the comment, and a link to ARB's website where the complete text of each comment can be found.

<u>Name of Commenter</u>	<u>Date and Location of Comment Submitted</u>
California Building Industry Association (CBIA)	Written Comment Letter Dated September 22, 2010 Link to Comments on ARB Website: http://www.arb.ca.gov/lists/ceqa2010/4-cbia_cqea_cmnts_to_carb_sb375_index.pdf
Kern Council of Governments (Kern COG)	Written Comment Letter Dated September 17, 2010 Link to Comments on ARB Website: http://www.arb.ca.gov/lists/2010sb375/644-arb_letter_4.pdf

Excerpts of both comment letters are provided verbatim as part of this document. See the attached copies of the complete comment letters, in which individual comments are identified by a number corresponding to the ARB responses provided below.

Where the commenter submitted comments on both the proposed targets and the FED, only comments raising significant environmental issues – here limited to comments on the FED – are responded to below.

Comments Submitted by CBIA (See attached copy of letter with numbered comments.)

Comment 1: This is an introduction and executive summary of the comments on the FED, which are detailed in the body of the letter.

Response: See ARB responses below to the detailed comments in the order in which they are presented in the letter.

Comment 2: This comment requests that the FED be revised to address lower regional targets that the commenter believes are more achievable.

Response: The request to modify the Proposed Targets does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the FED. The comment is acknowledged for the record. Lower regional targets are addressed in the FED's analysis of Alternative 3.

Comment 3: This comment provides a general description of certified regulatory programs and a general statement that the FED fails to satisfy ARB's regulations and CEQA's policy goals and substantive requirements as an introduction to ensuing comments.

Response: The commenter correctly states that under a certified regulatory program, a certified agency can produce substitute environmental documents that are the functional equivalent of an EIR, a negative declaration, or a mitigated negative declaration. ARB has followed the regulations in its certified regulatory program and satisfied the policy and substantive requirements of CEQA as explained in the response to each specific comment below.

Comment 4: This comment asserts that ARB has improperly deferred all analysis of environmental impacts on grounds of speculation.

Response: CEQA discourages agencies from engaging in unsubstantiated forecasting and speculation in EIRs. (CEQA Guidelines §15144 and §15145.) The FED acknowledges that the Proposed Targets have the potential to result in significant environmental impacts, identifies and analyzes those potential impacts broadly, and explains why a more detailed analysis of project-specific impacts is not possible at this time. The policy choices relating to how the MPOs will plan to meet the targets are left to the discretion of the MPO regions which will independently determine if, and how, to achieve the Regional Targets. Based on the numerous policy types that MPOs may employ to achieve Regional

Targets, and the possibility of varying intensities of deployment of each policy type by the regions, there are an infinite number of planning paths available to the 18 affected regions. ARB cannot anticipate or speculate about the unique regional policy choices that will be made in the coming months and years as regional plans are developed, and therefore, does not have sufficient information about future regional plans on which to base a reasoned analysis of potential regional and local impacts.

CEQA provides that "the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible" and that courts reviewing EIRs should look "not for perfection but for adequacy, completeness, and a good faith effort at full disclosure." (CEQA Guidelines §15151.) CEQA Guideline section 15204 recommends that reviewers of EIRs "should be aware that the adequacy of an EIR is determined in terms of what is reasonably feasible." The FED explains that a more detailed analysis is not reasonably feasible because it is unknown what planning paths will be taken in each region and therefore ARB cannot predict the nature or extent of localized impacts of individual measures or strategies regions will employ to meet their Regional Targets.

The comment cites two cases that are not relevant to the adequacy of ARB's FED because the cases address situations where the lead agency, unlike ARB, did not prepare an EIR. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com'n* (2007) 41 Cal.4th 372 [adoption of project fell within CEQA exemption]; *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 [negative declaration was not appropriate because record contained evidence supporting a fair argument that the project may have significant adverse growth inducing impacts].) When an agency has not prepared an EIR, the "fair argument" standard of review is applied. Whereas, when an agency prepares a functional equivalent of an EIR as occurred here, the more deferential "substantial evidence" standard applies. (See *Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 614.)

See also response to Comment 16 regarding deferral issue.

Comment 5: This comment asserts that ARB must analyze the reasonably foreseeable impacts of the Regional Targets now and not wait for MPOs to analyze impacts later because potential impacts are too speculative.

Response: See response to Comment 4 regarding speculation and what analysis is reasonably feasible. The commenter cites more cases where no EIR was prepared; these are likewise inapposite. See response to Comment 4 regarding the different standard applied to EIRs and functional equivalent documents.

Comment 6: This comment states that ARB must analyze the indirect impacts of changed development patterns that will result from the adoption of the Regional Targets.

Response: Based on the limited information available to ARB, the FED attempts to analyze the indirect impacts of the Proposed Targets by acknowledging and assessing the secondary effects of MPOs implementing a myriad of potential planning strategies at the regional and local levels to meet the Proposed Targets. The degree of specificity required in an EIR corresponds to the degree of specificity involved in the underlying activity. (CEQA Guidelines § 15146.) The underlying activity here is ARB providing each affected region with non-binding greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 2035. Each region will subsequently create a plan aimed at achieving those targets in accordance with the requirements of SB 375. Region-specific analyses will be necessary when each MPO prepares either its Sustainable Communities Strategy (SCS) as part of its Regional Transportation Plan (RTP), or its Alternative Planning Strategy (APS) as a separate document from the RTP.

The FED's analysis of the secondary effects of setting the targets need not, and here cannot, be as detailed as the specific plans and projects that will follow. (CEQA Guidelines § 15146.) In summary, the indirect effects reasonably foreseeable here from setting targets come nowhere close to those foreseeable from the rezoning at issue in the commenter's cited case (*Citizens for Quality Growth v. City of Mount Shasta* (1988) Cal.App.3d 433, 445-46). See also response to Comment 4.

Comment 7: This comment discusses the findings of a court case on the subject of speculation as a reason for not performing CEQA analysis.

Response: The case cited is one in which the lead agency did not prepare an EIR on the basis that impacts of a proposed ordinance were too speculative. Here, by contrast, ARB did prepare the functional equivalent of an EIR under its certified regulatory program and based its conclusions on substantial evidence concerning reasonably foreseeable impacts of, and alternatives to, the Proposed Targets. See response to Comment 4 (legal standard of review). In addition, even if the cited cases applied, here there is no specific ordinance or similar predicted action that can be judged as providing the "quality and quantity of evidence" rendering such impacts less speculative and requiring more detailed environmental review.

Comment 8: This comment asserts that ARB had access to sufficient data to provide a more detailed analysis of the potentially significant adverse impacts of the Proposed Targets.

Response: The referenced data, analyses, charts and reports posted on ARB's website formed the basis for target setting. That information included target-setting scenarios developed by some MPOs, and in some cases included the general type and location of housing and transportation projects that might be anticipated. However, it would be unreasonable for ARB to expect that future SCSs or APSs would be based on the same land use and transportation assumptions as were used for target-setting. The August 9, 2010 staff report and the FED clearly indicate that the target-setting scenarios are not to be considered regional plans; each MPO will need to develop their SCS, or APS if appropriate, through a separate process that involves public participation and local decisions about land use, transportation and housing policies. To analyze the impacts of the Proposed Targets based on the target-setting land use, transportation, and housing assumptions provided by the MPOs would be inappropriate because the MPO target-setting exercise relied on hypothetical scenarios with hypothetical emission reduction outcomes to demonstrate the potential greenhouse gas reductions that might be achievable. However, the MPOs retain great flexibility in developing future SCSs or APSs to meet their Regional Targets.

The commenter's assertion that ARB failed to include enough information is evaluated according to whether such an alleged failure is prejudicial. A prejudicial omission of information occurs only if it "precludes informed decisionmaking and informed public participation." (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at p. 712.) An environmental analysis is not expected to provide an exhaustive analysis. The analysis is reviewed for adequacy, completeness, and a good faith effort at full disclosure. (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 836.)

In this instance, the lack of more detail about foreseeable project level impacts inherent in the SB 375 process – leaving policy choices to MPOs in the future to achieve Regional Targets as one of many variables affecting the transportation planning process – did not preclude informed decision making or fail to inform the public. The FED describes the long and detailed process used to set the Proposed Targets. This involved a bottom-up approach, including a Regional Targets Advisory Committee that recommended factors and methodologies for setting targets, an exchange of technical information between ARB and the affected MPOs, and recommended targets from MPOs. Throughout the lengthy process, ARB considered the advice from multiple agencies and organizations and held seven public workshops in July 2010 to receive input on the draft Regional Targets during and after which staff considered public comments. This extensive and integrated approach ensured that the most

thorough and pertinent information was available to the decision makers and the public.

Comment 9: This comment states that the FED should have analyzed the impact of pushing growth into urban areas with known constraints to development.

Response: This comment appears to imply that the Proposed Targets will force growth to occur in geographic locations that are not suitable for development, and that the targets will therefore cause environmental harm. ARB disagrees for the following reasons. First, and as clearly stated in SB 375, ARB has no authority to dictate any particular type or location of development at the local level; land use decisions are the purview of local governments. Second, the local decisions about the type of development that is appropriate for specific areas will be made in the context of local environmental conditions, in full consideration of applicable development regulations and constraints. Third, the comment incorrectly implies that a region will rely solely on concentrating new development in existing urban areas as a means to meet the targets. MPOs can make use of a combination of many types of strategies to achieve the targets, many of which are unrelated to higher density of urban development. Examples of these strategies are generally referenced in the FED (pages 8 through 11, Potential Regional Target Compliance Mechanisms) and include transportation system management, transportation demand management, pricing policies and more.

Comment 10: This comment asserts that specific potential impacts can be anticipated, particularly because adoption of the Proposed Targets will impose mandatory criteria, making changed development patterns reasonably foreseeable.

Response: The targets identify regional goals which set in motion a regional planning process aimed at meeting the targets. In fact, the regions are not required to meet the targets. MPOs must develop a Sustainable Communities Strategy (SCS), or Alternative Planning Strategy (APS), that, if implemented, would meet greenhouse gas emission reduction targets for passenger vehicles set by ARB. However, ARB cannot anticipate whether, or what type of, development patterns will result from MPO-driven planning strategies to achieve the targets. SB 375 provides a great deal of flexibility to each MPO in how they plan to achieve the targets. If the targets can be achieved through an SCS, then the SCS will likely employ strategies that include more than land use changes. MPOs may use transportation policies and pricing policies, among others, as well as land use changes. If the MPO cannot meet its regional targets in an SCS, then it must prepare an APS, which, because it is not a part of the RTP, cannot bind the MPO to its implementation but rather, explains

what circumstances or conditions would have to change for the targets to be achieved.

Neither the SCS nor the APS are binding on local governments. An MPO cannot assume land use changes in the SCS without the agreement of the local governments that regulate land use. In either case, the MPOs have a great deal of flexibility in how they plan to achieve their targets. ARB has no authority to dictate how MPOs plan to achieve the targets nor can ARB require any mitigation to reduce or avoid any impacts that may arise from MPO planning. Therefore, the analysis requested by the commenter is beyond the scope of ARB's authority and capacity in undertaking its limited statutory mandate to set regional greenhouse gas emission reduction targets within the broader scheme of SB 375 which directly created the new planning requirements for MPOs. See also response to Comment 73 (non-regulatory nature of the regional targets).

Because this comment premises subsequent comments 11-14, its fundamental misunderstanding of the legal status of SB 375 regional targets undermines those comments as well.

Comment 11: This is a general comment expressing the commenter's view that air districts have a history of violating CEQA by avoiding analysis of impacts for projects that they claim benefit the environment.

Response: This comment does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED; it appears to be a generalized complaint about other agencies' CEQA analyses. Contrary, to commenter's general assertion, the FED made a good faith effort at full disclosure of potential adverse impacts to the degree that is reasonably feasible. See response to Comment 4. The FED assesses both beneficial and adverse environmental impacts of ARB's proposed action in accordance with the requirements of the ARB's regulations. (Cal. Code Regs., tit. 17, § 60005.) The inclusion of the assessment of beneficial environmental impacts does not undermine the adequacy of the FED's analysis of potential adverse impacts.

Comment 12: The comment repeats the commenter's assertion that ARB should have conducted a more detailed analysis of potential impacts. The comment discusses several CEQA cases setting aside agency decisions to use exemptions for projects intended to benefit the environment.

Response: See response to Comments 4, 6, 8 and 10. This comment appears to be a generalized complaint about other agencies' CEQA analyses. The descriptions of the CEQA cases do not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the FED and therefore do not require a response.

Furthermore, these cases are not relevant here because ARB prepared a FED and did not attempt to avoid a CEQA analysis by claiming an exemption.

Comment 13: This comment asserts that ARB has ignored environmental impacts of the project under the guise that the project is environmentally beneficial and impacts are speculative.

Response: See response to Comment 11 and 12. Furthermore, the CEQA cases cited by the commenter are not on point because they address situations in which the lead agency avoided preparing an environmental analysis. Here, ARB identified environmental benefits of the proposed targets as required by its certified regulatory program, not to avoid analysis of adverse effects.

Comment 14: This comment asserts that ARB has prepared more thorough environmental analyses in FEDs prepared for other ARB projects.

Response: This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the FED and therefore does not require a response. The sufficiency of any CEQA document is not dictated by its length or amount of time that it took to prepare. Because each project is unique, the adequacy of the FED for the Proposed Targets is not determined by comparison to FEDs for the Scoping Plan and the Renewable Electricity Standard. The environmental analysis of the Proposed Targets need not mirror the analyses done for other different projects. See also response to Comment 4.

The FED was prepared based on all available information, including several factors specific to this target-setting process, as explained in the FED. See also response to Comments 6, 8, and 10.

Comment 15: This comment asserts the FED failed to provide a stable, accurate project description by mischaracterizing the proposed project through setting “unrealistic and unachievable targets.”

Response: The FED provides a project description, including the project’s objectives, in accordance with CEQA Guidelines section 15124. This comment does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED, including specific ways in which the project description is inaccurate. Rather, this comment expresses commenter’s view that the Proposed Targets are unrealistically high, inconsistent with the Scoping Plan, and do not reflect the analyses conducted by the MPOs for target setting. ARB disagrees with commenter’s view for the following reasons.

While SB 375 targets need not be consistent with Scoping Plan goals set years earlier in order to be considered “stable” or “accurate”, they are more consistent than the commenter allows. The targets for the four large MPOs are based on scenario testing and modeling analyses prepared by the MPOs, and/or the recommendations of the MPO Boards. The targets for the eight San Joaquin Valley MPOs are clearly provisional and will be reassessed in time for their 2014 RTPs. The targets for the remaining six smaller MPOs generally reflect their current baselines, and in some cases (like SBCAG, AMBAG, Tahoe and Shasta) reflect the targets recommended by their Boards. As explained in response to Comment 67, AB 32 and SB 375 are separate and independent pieces of legislation and the estimate of emission reductions from the Regional Targets should not be directly compared to the estimate of emission reductions contained in the Scoping Plan.

ARB believes that the Proposed Targets are achievable and will move the regions away from business as usual planning. The analysis supporting ARB’s conclusions is provided in the FED and further documented in Board Resolution 10-31 (see findings at pp. 7-10).

The commenter asserts that the FED could not have analyzed the actual extent of the project (the targets) because the targets changed after the FED was published. After the FED was released, three of the smaller MPOs (Tahoe Metropolitan Planning Organization, Association of Monterey Bay Area Governments, and Santa Barbara County Association of Governments) recommended more stringent targets for their regions, which the ARB Board accepted on September 23, 2010. However, the more stringent targets for these three small MPOs did not materially change the analysis or conclusions of the August 9 FED because of the small difference that these more stringent targets make on the proposed targets as a whole. In addition, as the commenter acknowledges, ARB analyzed the potential impacts of the alternative, lower targets, which the commenter claims, without support, must form the basis for a proper project description.

In summary, here the commenter attempts to leverage their concerns about the stringency of the Proposed Targets (i.e., the preferred alternative) into an argument that the project is not properly described. CEQA requires only that ARB analyzes the proposed project’s impacts and potential alternatives, which it has done with required notice.

Comment 16: This comment asserts that ARB inappropriately deferred analysis of impacts to future analyses by MPOs, cities and counties.

Response: ARB disagrees with this comment for the following reasons. The FED clearly explains that SB 375 implementation involves several steps, including the development of regional transportation plans by MPOs. Each MPO has the opportunity to select from a myriad of policy choices to include in an SCS (or APS) in an effort to meet their regional targets; these policy choices are illustrated in the FED (see Potential Regional Target Compliance Mechanisms). Each MPO will select a unique mix of these varied policy choices (or strategies) to incorporate into their regional SCSs. There are a multitude of paths potentially available to each of the 18 MPOs to achieve their regional targets and each path can be considered a “compliance path.” This situation is similar to that faced by the State Water Resources Control Board (*San Joaquin River Exchange Contractors Water Authority v. State Water Resources Control Board*, (2010) 183 Cal.App.4th 1110, 1128.) In that case, dischargers had 15 options to choose from in complying with new water quality regulations. The court concluded that a CEQA analysis could not properly be performed until dischargers chose a compliance path specific to their area. Similarly, ARB cannot analyze region-specific and project-specific impacts at this time because the impacts cannot be known until MPOs choose – from not just 15 but from dozens of potential policy options and combinations thereof, including options and combinations not specifically modeled – to meet their Regional Targets. The MPOs will evaluate impacts and mitigation measures in detail within future environmental assessment documents for their respective regional transportation plans. See also response to Comments 4 and 6.

Contrary to the commenter’s assertion, ARB is not improperly deferring to future environmental review as in *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 440. ARB has engaged in a programmatic review of the Proposed Targets, including a broad evaluation of potential impacts associated with possible planning paths available to the 18 affected regions. (See response to Comment 4.) This is the proper level of detail at this stage based on the information that is currently available. It would be mere speculation to attempt to engage in any in-depth discussion of the various projects that may arise as a result of MPO planning in response to the requirements of SB 375 and the targets. (See *National Parks & Conservation Assn. v. County of Riverside* (1996) 42 Cal.App.4th 1505, 1515-1517 [analysis not required to include speculation as to future environmental consequences of future development that is unspecified and uncertain.”]; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1031-1033 [unreasonable to expect environmental analysis to produce detailed information about impacts of a future regional activity whose scope is uncertain and which will be subject to its own environmental review because until specific project details are fleshed out, environmental impacts are abstract and speculative].)

Comment 17: This comment asserts that setting targets too high will force preparation of APSs (instead of SCSs) thereby undercutting the intended goal of integrating land use planning and GHG reduction.

Response: This comment does not state a specific concern or question regarding the sufficiency of the scope of the analysis contained in the FED or the conclusions regarding impacts and mitigation measures. ARB agrees that achieving targets through an SCS would provide more certainty that the greenhouse gas reduction measures would be implemented, because the SCS (but not the APS) will be an integral part of the adopted RTP. ARB Resolution 10-31 (at page 13) states that the Board prefers to see the targets achieved through SCSs rather than APSs for this reason.

ARB disagrees that the Proposed Targets are too high and cannot be achieved through an SCS. ARB carefully evaluated all the information before it, including the data and analyses provided by the MPOs and input from a wide range of stakeholders, and used its independent judgment to consider alternative approaches to target setting and to arrive at the proposed targets for each of the 18 regions. As a result, ARB proposed the targets which it considers to meet the goals of the statute and can reasonably be expected to be achievable through SCSs.

The comment incorrectly states that if the targets can only be achieved through APSs, that the policy goal of SB 375 will not be met. ARB disagrees. The statute itself authorizes the adoption of an APS to meet the target, even though the APS is not part of the RTP and is therefore less likely to be implemented than an SCS. The policy goal of SB 375 is to encourage regions to think more comprehensively about ways to integrate land use, housing, and environmental issues into their regional transportation plans. Even if an MPO must use an APS to demonstrate it can achieve the targets, the intent of the statute will have been met because the region will have identified the changes that would be necessary within the region to achieve the targets through a variety of strategies, including changed land use patterns, among others.

See also response to Comment 15 (describing improper leveraging of concern over stringency of proposed targets).

Comment 18: This comment asserts the FED wrongly states that APSs are exempt from CEQA.

Response: This comment does not state a specific concern or question regarding the sufficiency of the scope of the analysis contained in the FED or the conclusions regarding impacts and mitigation measures. ARB

accepts the commenter's interpretation that an MPO's adoption of an APS requires compliance with CEQA. As stated in the FED at pages 5 and 24 and in the responses above, the future actions by MPOs to implement the targets (whether through an SCS or APS) will undergo separate environmental review.

Comment 19: This comment asserts ARB knowingly set very aggressive targets that are not achievable and which will result in "a variety of consequences."

Response: See response to Comments 8 and 17. The targets proposed by ARB staff were based on input from the MPOs, which included target-setting scenarios that indicated a range of possible emission reduction levels based on currently available land use, population, housing, and transportation data and current travel model capabilities. The proposed targets are supported by substantial evidence in the record prior to and during the September 23, 2010 ARB Board meeting. ARB's approach to target setting is clearly discussed in the August 9, 2010 staff report which accompanied the August 9, 2010 FED. See responses below to specific assertions by the commenter regarding the potential environmental impacts of setting targets at the proposed levels.

Comment 20: This comment asserts that the Proposed Targets will drive new development into non-MPO regions of the state, resulting in adverse environmental impacts.

Response: See response to Comments 4 and 10. As explained above, the Proposed Targets are meant to implement SB 375 by encouraging, but not mandating, emission reductions. SB 375 gives MPOs the option of meeting the targets either through adoption of an SCS (a financially constrained, actionable plan for integrating land use, transportation and housing) or an APS (which does not commit the MPO to implementation but does identify the conditions that would need to be changed for the targets to be met). The comment appears primarily aimed at the general goals of SB 375 which encourage a change in land use patterns in order to reduce emissions.

ARB disagrees that the Proposed Targets are set at levels that preclude development sufficient to absorb California's housing needs and that "development will be driven out of these more rural, sparsely populated areas of the state". Growth in rural parts of the state is naturally inhibited by resource and infrastructure limitations. The commenter provides no evidence demonstrating that growth will stagnate in the regions of the state covered by MPOs and that more rural non-MPO regions will become the focus of development. The commenter simply states an opinion that "developers will look for creative alternatives to provide (this) housing, even if it means looking outside of their traditional development zone...."

The commenter provides no evidence that rural, non-MPO areas of the state will attract the population and employment growth that is projected for the state. (See CEQA Guidelines § 15204 (c).) An effect shall not be considered significant in the absence of substantial evidence. (Id.)

Comment 21: This comment asserts that the targets will drive development away from the larger MPO regions toward the smaller MPO regions.

Response: This comment is based on the incorrect assumptions that (1) the proposed targets are “infeasible,” (2) the targets for SBCAG and AMBAG allow for increases in per capita emissions, and (3) therefore, growth in the larger MPO regions could be redirected to the central coast. The targets are not infeasible for the reasons given above (see response to Comments 19 and 20). The targets are based on the most currently available data and analyses performed by both MPOs and ARB. The proposed targets are not regulatory and can be met by preparing either an SCS or an APS. Furthermore, several of the smaller MPOs recommended targets that are more stringent than those proposed by ARB staff; SBCAG, AMBAG, Tahoe and Shasta all rejected targets that allow increases in per capita emissions and the ARB Board on September 23 set targets for these four MPOs which reflect no increase in per capita greenhouse gas emissions.

Comment 22: This comment asserts that the targets may drive development outside the state of California, thereby resulting in greater net environmental impacts.

Response: This comment is a general criticism of California’s greenhouse gas regulations, increasing challenges related to development costs, and delays caused by CEQA review. Because this comment is not directed at the specific CEQA project at issue it does not require a response. However, ARB staff provides the following information for clarification.

The proposed targets are intended to satisfy the statutory mandate in SB 375, which calls for a reduction in greenhouse gas emissions from sources within the State of California, not from global sources.

The commenter asserts that the business climate in California continues to drive businesses out of the state and that the “Targets will likely provide an additional push outside the state for many developers.” This claim is unsubstantiated by any evidence from the commenter. ARB disagrees that this will be the net result of the proposed targets. Local governments will be free to approve projects that are inconsistent with an adopted regional SCS or APS with the only consequence being that they must perform full CEQA review for those projects as already required under existing law. Moreover, ARB has determined that the targets will

encourage more integrated planning to provide affordable housing, mobility options, and higher quality of life in California communities, all of which could be attractive to employers. The additional certainty afforded to developers and businesses by the adoption of the next cycle of RTP updates and the associated CEQA streamlining provided to development projects that are consistent with either an SCS or an APS, could be attractive to certain businesses not only to stay in California but to grow in California.

ARB notes that the commenter relies on at least one economic study that has been discredited by the Economic Impacts Subcommittee of the Economic and Allocation Advisory Committee (EAAC). In June 2009, the 16-member Economic and Allocation Advisory Committee (EAAC) was appointed and assigned two roles. One was to provide advice to the ARB relating to the method of allocation of emissions allowances under the cap and trade component of AB 32. The other was to assist the ARB in its analysis of the economic impacts of the AB 32 Scoping Plan. For the latter role, the EAAC formed an Economic Impacts Subcommittee which prepared a report published as Appendix D to the EAAC report¹.

In its report, at page 11, the Economic Impacts Subcommittee comments specifically on the lack of credibility of the Varshney/Tootelian report which is cited by the commenter to support its claim:

“Based on our review of the ARB’s updated assessment, we believe that, despite some shortcomings, the ARB’s analysis has considerable merit and provides important information that should help refine expectations about the potential impacts of AB 32, both for particular sectors or consumer groups and for the economy overall. A main conclusion from the ARB’s updated analysis is that the net impact of AB 32 on the California economy will be small. We find that the ARB has provided significant evidence to support this conclusion. Other studies have employed less optimistic assumptions in estimating the impact of AB 32 on the California economy. Among the methodologically sound studies, the estimated costs tend to be somewhat higher – but they are still small relative to the California economy. Even the most pessimistic studies find that, under AB 32, California’s economy will experience considerable per capita real income growth over the next few

¹ The EAAC’s *Updated Economic Analysis of California’s Climate Change Scoping Plan, Staff Report to the Air Resources Board*, March 24, 2010, is available at:
http://www.arb.ca.gov/cc/scopingplan/economics-sp/updated-analysis/updated_sp_analysis.pdf

decades at rates very close to the rates that would occur in the absence of AB 32.”²

The report by the Economic Impacts Subcommittee of the EAAC compared the results from the ARB’s economic analysis of the AB 32 Scoping Plan with results from other studies, including results from analyses by Charles River Associates (Bernstein et al., 2010), Thomas Tanton (2010), and the U.S. EPA. In its report, at page 11, the Subcommittee notes:

“In June 2009 Sanjay B. Varshney and Dennis H. Tootelian, operating as Varshney & Associates, submitted a report to the California Small Business Roundtable “Cost of AB 32 on California Small Businesses – Summary Report of Findings.” This study estimates costs roughly ten times as high as does the CRA report. This report has been fully discredited by numerous highly respected researchers, including Frank Ackerman (Stockholm Environment Institute and Tufts University), Chris Busch (Center for Resource Solutions), Matthew Kahn (UCLA), James Sweeney (Stanford University), and Mac Taylor (California Legislative Analyst). According to these reviewers, the report contains fundamental problems in its data, methods, and interpretation. For example, the Sweeney review concludes: “Examination of the methods used by the authors leads to the conclusion that these results are highly biased and have no credibility.” The Legislative Analyst’s office concludes that the Varshney/Tootelian study has “major problems involving both data, methodology, and analysis. As a result of these shortcomings, we believe that their principal findings are unreliable.” Given the lack of credibility of the Varshney/Tootelian analysis, we do not list its estimates here.”³

ARB accepts the findings of the EAAC with regard to the lack of credibility of the Varshney/Tootelian study and its conclusions regarding economic impacts.

Comment 23: This comment provides general information regarding federal RTP planning requirements and asserts that setting regional targets too high will result in loss of federal funding for transportation projects.

² Appendix D: Comments on the ARB’s Updated Economic Impacts Analysis by the Economic Impacts Subcommittee of the Economic and Allocation Advisory Committee, April 18, 2010, is available at: http://www.arb.ca.gov/cc/scopingplan/economics-sp/updated-analysis/revised_eaac_appendix.pdf

³ Appendix D: Comments on the ARB’s Updated Economic Impacts Analysis by the Economic Impacts Subcommittee of the Economic and Allocation Advisory Committee, April 18, 2010, footnote 3 at page 11.

Response: The first three paragraphs of the comment provide general information regarding the RTP process, and therefore, do not require a response because they do not state a specific concern or question regarding the sufficiency of the scope of the analysis contained in the FED.

The comment as a whole asserts that because the proposed targets are too high, MPOs will be unable to make the requisite demonstration of financial constraint and SIP conformity in their RTPs, leading to the loss of federal transportation funding to other states and discouragement of growth in California. This assertion is based on speculation and unsupported by any evidence. Furthermore, the comment is not related to the adequacy of the environmental analysis in the FED, but rather, critiques the level of the proposed targets. See also response to Comment 15 (describing improper leveraging of concern over stringency).

The proposed targets will not have the effect of reducing the amount of federal funding available to an MPO. SB 375 provides that an MPO will prepare an SCS to achieve the regional targets, if feasible to do so. If an MPO can achieve its regional targets in an SCS, which is an integral part of the RTP, then by definition, the financial, land use, housing and transportation elements of the RTP must be internally consistent and the transportation projects included in the RTP must be financially constrained. ARB staff disagrees that in an attempt to achieve a high target, a region might be inclined or compelled to include unreasonable or unsupportable assumptions. Rather, a region would be compelled to demonstrate real commitments to any measures included in the RTP/SCS, even in the event that the target is not met, because the federal RTP regulations demand that any policies and assumptions in the RTP be reasonable, and would be subject to peer review and eventual approval by the federal agency.

The assertions that USEPA would use “evidence supporting much lower targets” in its conformity determination, and that MPOs will be unable to satisfy conformity and financial constraint requirements in an SCS, are baseless. Such statements prematurely predict the outcome of the SCS development process that will occur over the next several months and years with extensive input from stakeholders and the public.

If it is not feasible for an MPO to achieve its targets through an SCS, and it must do so through an APS, then there is no requirement for a financially constrained plan or a conformity determination because the APS is not a part of the RTP and therefore is not subject to federal review. The commenter’s reference to Government Code section 65080(b)(2)(H)(4) appears to be an error; ARB staff believe the intended section reference is section 65080(b)(2)(H)(iv), now 65080(b)(2)(I)(iv) as amended, which

states that “an alternative development pattern set forth in the alternative planning strategy shall comply with Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations, except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.” ARB disagrees with the commenter’s assertion that the federal regulations require an APS to undergo a conformity determination. The commenter overlooks a key provision in SB 375 – that the alternative development pattern must comply with federal law “except to the extent that compliance will prevent achievement of the greenhouse gas emission reduction targets approved by the state board.” In other words, SB 375 explicitly provides a relaxation of the federal rules as they apply to an APS, such that an APS is subject to federal law only to the extent that compliance with federal law will not prevent the APS from meeting the regional targets. Even if the concept of financial constraint were to be applied to the APS (which ARB staff believes it is not applicable), it would have no bearing on conformity or access to federal funds. Conformity applies only to documents/plans reviewed and acted upon by the federal government. The APS will not be a part of the RTP and thus will not be reviewed or approved by the federal agencies, nor does it have any standing under federal law.

The assertions that an APS would not be based on the best available information and would undermine the analysis in the RTP are without basis. SB375 specifically provides that the APS will identify the conditions under which the region could achieve its targets, if those conditions existed, but there is no presumption that those conditions must exist, either in the present or the future.

The commenter contends that MPOs will be “forced to focus their spending nearly exclusively on infill-related transit projects” to meet their targets in an SCS. The work currently being done by SANDAG to develop alternative planning scenarios for its SCS/RTP demonstrates, at least in one case, that an MPO is able to achieve greater levels of greenhouse gas reduction than proposed by ARB while formulating financially constrained planning alternatives that do not require “exclusive” investment in transit. The five financially constrained RTP planning alternatives presented to the SANDAG Board on December 17, 2010 are not exclusively transit-oriented, do provide funding for road and highway projects, and would achieve substantially greater levels of emission reductions as compared to the region’s proposed targets.⁴

The commenter has provided no evidence to support the comment that the proposed targets will result in loss of federal funding for transportation

⁴ SANDAG Staff Report on 2050 Regional Transportation Plan, December 17, 2010, is available at http://www.sandag.org/uploads/meetingid/meetingid_2554_12188.pdf

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projects envisioned in either an SCS or an APS, or that there would be any direct or indirect environmental impacts as a result of said loss of funding.

The only clear relationship between federal transportation funding and the RTP is that transportation projects included as part of a federally approved RTP are eligible for federal financial assistance. This was true before the passage of SB 375 and continues to be the case.

Comment 24: This comment asserts that other specific categories of environmental impacts that can be anticipated as a result of the proposed targets were not addressed at all in the FED (including increased sprawl in non-MPO and small MPO regions; and loss of agricultural resources, biological resources and cultural resources resulting from a shift in development patterns to less developed areas of the state; and hydrologic/water quality impacts from urban development in the state's most highly developed areas).

Response: The FED clearly states that "ARB cannot anticipate what development policies, if any, will be adopted and implemented at the regional or local level." (FED at page 13.) This statement is accurate and supported by the facts that (1) ARB does not have authority over local land use decisions, (2) each MPO has discretion to employ any number of policies or combinations of policies to achieve the proposed targets, and (3) SB 375 authorizes an MPO to adopt an APS rather than an SCS if it cannot feasibly achieve the targets through an SCS. Therefore, ARB could not and did not speculate that wholesale changes would occur in California's development patterns, as suggested by the commenter. See also responses to Comments 4, 6, 10 and 16.

Furthermore, the ARB disagrees with the commenter's premise that the targets would result in increased sprawl in non-MPO and small MPO areas of the state and a shift in development patterns to less developed areas of the state. See response to Comment 20. The goal of SB 375 and the proposed targets is to encourage, but not mandate, more integrated planning that recognizes the need for land use patterns, housing development and transportation systems to be more sustainable. That policy goal is a check against the sprawl, and associated impacts on agricultural, biological, and cultural resources, that the commenter asserts will result from future SCSs and APSs. The MPOs, in developing their SCSs, must respect the land use policies of local governments on which the RTP planning assumptions will be based. Biological resources, cultural resources, and water quality are protected by federal, state and local laws and regulations which are not superceded by any state greenhouse gas regulation or greenhouse gas emission reduction measures that a region or local government might employ. Finally, we note that it is difficult to reconcile the commenter's insistence here that the

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targets will induce sprawl in rural, non-MPO, or small MPO jurisdictions, with their repeated comments (see next) that the MPOs' targets will require "extreme densification" in the remaining MPO areas subject to targets.

Comment 25: This comment asserts the FED fails to consider impacts associated with extreme densification required by the regional targets and the conflicts the targets will create with existing state laws. (This comment introduces Comments 26 through 34 below regarding specific state laws.)

Response: The FED recognizes the potential for the proposed targets to affect air quality and traffic. However, ARB disagrees with the contention that the proposed targets will result in conflicts with several existing state laws as there is no supporting evidence that such conflicts will occur. The commenter bases its assertion of conflicts on speculation that extreme densification of development will result from the regional targets but provides no supporting evidence that such densification or conflicts will occur. SB 375 does not give any authority to ARB, MPOs, or local governments to violate existing laws in the implementation of SB 375. Existing laws that protect these resources and infrastructure must be complied with in the development and implementation of SCSs and APSs. In addition, the "extreme densification" purportedly required by the proposed targets is nowhere quantified or described by the commenter for any particular area; this defect pervades Comments 26-27 and 29-34 as well.

Comment 26: This comment asserts that the regional targets will create conflicts with existing state air quality laws and local air quality guidelines.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) Specifically, there is no description of how the targets would require sensitive receptors to be located in prohibited areas, and the BAAQMD example appears to be a complaint about that District's screening tool with no description of how the proposed targets conflict with District policy.

Comment 27: This comment asserts that the regional targets could run afoul of state safety and child welfare requirements because extreme density required by the regional targets will not allow sufficient space for new schools.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) Specifically, there is no basis for the assumption that the "extreme density required by the Regional Targets" will not allow sufficient space for new schools or child care facilities in growing communities.

Comment 28: This comment asserts that if development is forced to areas outside of MPOs, development in previously undisturbed areas could conflict with state laws protecting archaeological, Native American and other cultural and historic resources.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) See also response to Comments 20 (no evidence demonstrating that more rural non-MPO regions will become the focus of development) and 24 (apparent conflict between allegations of “extreme densification” in developed areas with simultaneous sprawl into rural, non-MPO, or small MPO areas).

Comment 29: This comment asserts that extreme density of development required to meet the regional targets will conflict with new stormwater regulations.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) ARB staff disagrees that Regional Targets will force the type of development which would conflict with stormwater regulations. The municipal regional stormwater NPDES permit letter cited by the commenter (commenter’s Attachment R) does not demonstrate that future projects would be in conflict with the stormwater regulations. The regional targets cannot force any land use changes at the local level. ARB staff is not aware of any instances where a local government’s decision to approve compact urban development has been thwarted by the inability to comply with new stormwater regulations. As individual projects are designed on specific project sites, the unique characteristics of the project and the project site must be evaluated by permitting agencies before they decide to approve or disapprove the project.

Comment 30: This comment asserts that land use based greenhouse gas emission reduction strategies could have adverse impacts to social equity concerns, including displacement and gentrification, which the regional targets should avoid.

Response: CEQA Guidelines provide that economic or social effects of a project shall not be treated as significant effects on the environment; However, economic and social effects may be used to determine that a secondary physical change in the environment is significant (CEQA Guidelines § 15131 (a) and (b)). The commenter does not provide any evidence of a connection between an economic or social effect and an environmental impact. Therefore, this comment does not raise a significant environmental issue or question and does not require a response. Furthermore, ARB disagrees with the assertion that the

regional targets will adversely affect lower income families. On the contrary, one expected outcome of regional plans developed by MPOs to meet regional targets is greater equity for lower income households due to the greater availability of housing and transportation options, reduced costs for transportation, and improved access to services (see FED at pages 11-13).

Comment 31: This comment asserts that by necessitating extremely dense development, the regional targets will inhibit the ability of cities and counties to ensure that urban development is balanced with parklands and urban open space.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) ARB disagrees that such impacts would occur due to the targets set by ARB because SCSs and APSs and future land use developments must comply with all relevant state and local laws that protect parklands and urban open spaces. As individual projects are designed on specific project sites, the unique characteristics of the project and the project site must be evaluated by permitting agencies before they decide to approve or disapprove the project.

Comment 32: This comment asserts that by increasing urban density, the regional targets will likely require additional power lines, posing new or increased risks to the increasingly urbanized communities.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) Whether new power lines will be required to serve growing populations in urban communities will need to be determined based on the outcome of regional and local land use plans. As individual projects are designed on specific project sites, the unique characteristics of the project and the project site must be evaluated by permitting agencies before they decide to approve or disapprove the project.

Comment 33: By requiring intense urban development in some areas, and encouraging sprawl in others, the regional targets will likely increase LOS impacts on regional highways and arterials, frustrate implementation of congestion management programs and interrupt federal transportation funds.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) Population growth is expected to occur, regardless of SB 375 implementation. The regional targets will encourage regional and local planning to reduce the number of trips made by automobiles and increase

non-motorized transportation options, thereby potentially relieving, rather than increasing, traffic congestion in some locations.

Comment 34: The regional targets conflict with state housing law mandates and will cause local jurisdictions to fail to achieve regional housing needs allocations.

Response: See response to Comment 25. The commenter provides no evidence to support this assertion (CEQA Guidelines § 15204 (c).) The SCSs and APSs developed by MPOs must “identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region” and must “consider the state housing goals” set forth in state housing element law. (Government Code section 65040 (b)(2)(B).) Individual cities and counties are responsible for planning to meet the housing needs allocated to them by their MPO. The commenter provided no evidence to support the contention that regional targets will “force all growth to occur within dense urban areas.” The establishment of regional targets does not relieve any city or county of the responsibility to comply with state housing element law to plan for its share of the region’s housing need. SB 375 provides a direct link between the RHNA process and the transportation and land use planning processes, making it more likely that local jurisdictions will be able to achieve their regional housing needs allocations (see also response to Comment 49).

Comment 35: The FED fails to provide a legally adequate analysis of those impacts it did consider by deferring all meaningful analysis of the project’s potential environmental impacts, beginning with overestimated emission reduction benefits.

Response: See response to Comments 4, 6, 8, 10, 12, 16, and 42.

Comment 36: The FED identifies significant impacts but does not mitigate them, as required by CEQA, leaving them as significant unavoidable impacts.

Response: The FED discussed mitigation measures for each of the potential significant impacts identified in the FED (see FED at pp. 16-18). CEQA requires mitigation of significant impacts, where feasible, but recognizes that a lead agency may not be able to mitigate every impact to a less than significant level. If a lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. (CEQA Guidelines §15126.4(a).)

Comment 37: This comment asserts that the FED mischaracterizes and overstates potential beneficial impacts of the regional targets.

Response: The FED discusses environmental benefits because the ARB regulations require it. (Cal. Code Regs., tit. 17, § 60005.) See response to Comment 11.

ARB included an excerpt from the RTAC report (September 2009) because it succinctly summarizes the co-benefits of regional targets, environmental and otherwise. The RTAC report's listing of benefits was a thorough and publicly vetted articulation of benefits that could be expected from adoption of regional greenhouse gas reduction targets. Contrary to the commenter's assertion, the inclusion of the benefits described in the RTAC report does not indicate a lack of independent judgment by the ARB. It indicates that a thorough assessment of benefits was performed through the RTAC process which the ARB facilitated in 2009, the results from which ARB was confident in using.

The commenter asserts that the FED misleadingly suggests that the public and decision makers should weigh the potential benefits against the potential negative environmental impacts of the regional targets. ARB disagrees that the FED was misleading. As noted above, the purpose of identifying beneficial impacts in the FED is to satisfy the requirement in ARB regulations to do so. Beneficial impacts of ARB projects are typically but not always related to environmental issues generally and air pollutant emissions specifically, and the Board is fully capable of weighing all such impacts as well as distinguishing those from other potential benefits. Decision makers must always weigh all of the evidence before it when making a final decision on a project. This includes information regarding positive as well as negative effects of approving the project.

See also response to Comments 38 through 41.

Comment 38: Commenter states the FED's description of alleged benefits of the project is extremely vague, and the FED does not demonstrate how they will be achieved.

Response: The FED discusses the potential benefits of the regional targets, and as part of this discussion, includes an excerpt from the RTAC report (September 2009) that concisely summarizes the potential benefits of the proposed project, with a brief description of how the benefit could potentially be achieved (FED at pp 11-13).

The FED clearly explains that ARB cannot analyze more detailed, region-specific and project-specific impacts at this time because the impacts cannot be known until MPOs select a mix of policies to include in an SCS (or APS) in an effort to meet their regional targets. The MPOs will evaluate impacts and mitigation measures in detail within future

environmental assessment documents for their respective regional transportation plans. See also response to Comments 4, 6, and 16.

Comment 39: The commenter disagrees with the FED's statement that the regional targets will promote more equitable communities. The FED should analyze social equity impacts of the regional targets.

Response: The FED clearly discusses social equity as both having the potential to benefit from, as well as be adversely impacted by the adoption of regional targets. As noted above, ARB cannot analyze region-specific and project-specific impacts, social equity included, at this time. The MPOs will evaluate impacts and mitigation measures in detail within future environmental assessment documents for their respective regional transportation plans. See also responses to Comments 4, 6, and 16.

Comment 40: Commenter asserts the FED mischaracterizes the beneficial impacts of the project.

Response: The FED does not claim, assert, speculate, or predict what the beneficial impacts of regional targets will be. The FED discusses both the potential beneficial and adverse impacts, stating that the nature and extent of any of the potential impacts is difficult to predict given the numerous and varied compliance options available to meet the regional targets.

As noted above, MPOs will evaluate the impacts of the regional targets, including impacts to air quality, open space, farm and forest land, in detail within future environmental assessment documents for their respective regional transportation plans. See also responses to Comments 4, 6, and 16

Comment 41: Commenter asserts that even if the project were likely to result in environmental benefits, this does not excuse ARB from performing a meaningful analysis of the potential adverse environmental impacts of the project.

Response: Contrary to the commenter's general assertion, the FED made a good faith effort at full disclosure of potential adverse impacts to the degree that is reasonably feasible. The FED includes analysis of the potential adverse environmental impacts of the regional targets as required by ARB regulations. (Cal. Code Regs., tit. 17 § 60005.) See also response to Comment 4.

Comment 42: Commenter asserts the FED unlawfully defers meaningful analysis of all project impacts. (This comment prefaces Comments 43-56.)

Response: SB 375 target-setting will require MPOs to act in their next planning cycles, as required by law, to develop region-specific RTPs with

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an SCS, or if necessary, a separate APS. The appropriate time for more detailed impact analysis is when the MPO prepares or updates its RTP/SCS (or APS). Each MPO has the opportunity to select from a myriad of policy choices as they design their regional plans to meet their Regional Targets, and ARB cannot anticipate what these choices will be. See response to Comments 4, 6, 8, 10, 12 and 16.

Comment 43: Commenter asserts that deferring analysis of impacts at the MPO level would result in piecemeal analysis of individual targets, rather than consideration of the impacts of the project as a whole.

Response: Again, the commenter prefaces a series of comments (here 44-56) with a defective premise that pervades those comments as well; that the Regional Targets are being adopted as “mandates” with no flexibility. As clearly discussed in the Staff Report, and specifically in the FED, SB 375 does not require MPOs to meet targets but rather requires preparation of an SCS or APS as part of the regular regional transportation planning process. While it is not ARB’s role to alter the process set forth in SB 375, we note that that transportation planning process has always been and remains a highly flexibility one subject to innumerable decision points between target-setting and final plan approval. See response to Comments 10 and 73.

Comment 44: Commenter asserts the FED makes no attempt to analyze where or to what extent the exposure of sensitive receptors to high traffic areas is likely to occur.

Response: See response to Comments 9, 25 and 26. The commenter provides no evidence to support this assertion. (CEQA Guidelines § 15204, subd. (c).) Specifically, there is no description of how the targets would require sensitive receptors to be located in impacted areas. ARB does not have sufficiently detailed information about future plans that MPOs may develop on which to base any determinations regarding exposure of sensitive receptors to high traffic volumes or other emission sources. Even the RTPs prepared by MPOs are typically not site-specific enough to make determinations about localized traffic impacts on sensitive receptors. To expect ARB, at this juncture, to be able to predict whether and where sensitive receptors will be exposed to high traffic volumes, is unreasonable. As specific sites or locations are identified for future development by cities and counties through adoption and amendments of their land use policies and zoning regulations, those local governments will assess localized impacts and will be required to comply with all relevant state and local laws and regulations regarding protection of sensitive receptors.

Comment 45: Commenter asserts the FED fails to consider air quality impacts in densely populated areas and completely fails to consider and analyze the likely impacts of pushing development into less populated areas of the state.

Response: See response to Comments 9, 25 and 26. The FED recognizes the potential for the proposed targets to affect air quality. However, ARB disagrees with the contention that the proposed targets will result in conflicts with existing air quality, biological, agricultural, equity, urban parks, traffic congestion, and housing laws as there is no supporting evidence that such conflicts will occur. The commenter bases its assertion of conflicts on speculation that extreme densification of development will result from the regional targets but provides no supporting evidence that such densification or conflicts will occur. SB 375 does not give any authority to ARB, MPOs, or local governments to violate existing laws in the implementation of SB 375. Existing laws that protect these resources must be complied with in the development and implementation of SCSs and APSs. In addition, the “extreme densification” purportedly required by the proposed targets is nowhere quantified or described for any particular area; this is true for allegations made in Comments 26-27 and 29-34 as well.

Comment 46: Commenter states that given the extreme density that would result from the regional targets, the FED should analyze the traffic congestion it will create and the associated impacts of congestion on GHG emissions, air quality, noise and other impacts.

Response: See also response to Comments 9 and 25. The commenter provides no evidence to support the assertion that extreme density of development will result from the regional targets (CEQA Guidelines § 15204 (c).) As stated above, the commenter’s assertion that the targets will result in extreme density appears inconsistent with the commenter’s assertion that because MPOs will not be able to achieve the regional targets, development will be pushed into non-MPO regions of the state.

As explained above, neither the ARB (through its setting of regional targets) nor the MPOs (through their development and adoption of SCSs or APSs) have any authority to require local governments (cities and counties) to change their local land use plans and policies to enable or require denser development than desired and authorized by the local government. As explained in the Staff Report and the FED, land use changes (such as more compact infill urban development) is only one of various strategies that an MPO may employ to achieve its regional targets. There is no evidence that MPOs will rely on extreme density as the means for achieving their regional targets, or that local governments will revise their local land use regulations in conformance with those regional plans to enable such density.

Comment 47: Commenter asserts the FED must provide more detail about the potential growth that the proposed targets may cause in urban infill areas within each MPO's jurisdiction.

Response: See also response to Comments 9 and 25. Anticipated growth in California's population will occur with or without the Regional Targets. That growth must be accommodated through land use plans developed and adopted by local governments (cities and counties). The targets set by ARB will not dictate how the anticipated population growth will be distributed across the state. Nor can MPOs dictate local land use development policies or adopt regional plans that conflict with local land use policies. While the intent of SB 375 is to encourage more sustainable land use patterns that include increased urban infill development, the targets cannot force that outcome. Indeed, the intent of the targets is to encourage more integrated planning at a regional scale, with incentives – not mandates -- for local governments to make land use changes consistent with those regional plans.

Comment 48: Commenter provides information regarding the regional housing needs allocation process.

Response: Information noted, no response necessary.

Comment 49: Commenter asserts the regional targets will force all growth to occur within dense urban areas which will likely mean that all but the densest communities will not be able to achieve their allocated housing requirements. The project will force MPOs to violate state housing law.

Response: It is difficult to reconcile the commenter's insistence here that the regional targets will force all growth into dense urban areas, with their repeated comments elsewhere that the targets will induce sprawl in rural, non-MPO, or small MPO jurisdictions.

Although the targets must be achieved through either an SCS or APS, the targets are not mandates for local government and do not supercede or trump any other laws, including state housing laws. MPOs cannot violate state housing law; in fact, MPOs must consider state housing goals and state housing element law when developing their SCSs. (Government Code section 65080(b)(2)(B)(iii) [requirement that MPOs to accommodate state housing needs for the region in their SCS].) In addition, SB 375 changed state housing law to better coordinate and integrate housing planning with regional transportation plans. (Government Code section 65584.04(i)(1) and (3) [requirement that allocation of housing units within the region to be consistent with the development pattern in the SCS].) Presumably these changes will result in housing allocations that more

closely align with MPOs' evolving plans to reduce GHG emissions through their SCS or APS; indeed this coordination between the RHNA process and transportation planning was one of the driving forces behind the passage of SB375.⁵

See also response to Comments 9, 25, and 34 (assertions of "extreme densification" not supported; targets do not dictate location of future development; local compliance with regional housing allocations).

Comment 50: Commenter asserts the regional targets will render a local jurisdiction's ability to achieve, or even create a plan to achieve, housing allocations infeasible, thereby invalidating the jurisdiction's general plan.

Response: The targets encourage consideration of greenhouse gas emissions in regional planning, they do not mandate changes in local land use policies or development regulations. See also response to comment 49. There is no evidence to support the commenter's assertion that local jurisdictions will be unable to meet their housing allocations, nor did the commenter explain its assertion that a local general plan could be invalidated due to the regional targets. In fact, there should be greater agreement between local housing elements and their housing allocations, as a result of SB375, because a region's SCS must include a development pattern that is consistent with its housing allocation, and the development pattern in the SCS will be informed by local land use assumptions provided by the cities and counties.

Comment 51: Commenter asserts the regional targets could result in the displacement of existing residents into small MPOs or non-MPO areas, with environmental justice implications. Commenter also asserts that ARB failed to conduct a social equity analysis of the targets, which must be included in the FED.

Response: See response to Comments 9, 20, 21, 24 and 30 (unsupported assertion that development will be pushed into small and non-MPO areas; unsupported assertion of social equity impacts).

⁵ GC 65080(b)(2)(B)(iii): "Identify areas within the region sufficient to house an eight-year projection of the regional housing need for the region pursuant to Government Code Section 65584..." GC 65584.04(i)(1): "It is the intent of the Legislature that housing planning be coordinated and integrated with the regional transportation plan. To achieve this goal, the allocation plan [RHNA-Plan] shall allocate housing units within the region consistent with the development pattern included in the sustainable communities strategy [SCS]." GC 65584.04(i)(3): "The resolution approving the final housing need allocation plan [RHNA-Plan] shall demonstrate that the plan is consistent with the sustainable communities strategy [SCS] in the regional transportation plan [RTP]."

Comment 52: Commenter asserts the FED needs to analyze the major demands that regional targets may place on existing utility services, availability of public services such as schools, libraries and parks, and provide detail about the type of expansions that will be required, what their construction and operating impacts will be, and whether such utility and service additions are feasible.

Response: Here, the commenter appears to be saying that that new population growth in California, and the development associated with it, will strain the existing capacity of utilities and public services to accommodate that growth in both rural and urban areas, including infill areas. California's population will continue to grow, regardless of regional targets, and planning for infrastructure needs will continue to be a responsibility of the appropriate state, regional and local government agencies and service providers. The regional targets do not cause the growth that would place demands on utilities and services; the targets only encourage those government entities with responsibility for making land use, housing, and transportation decisions, to coordinate their planning in a way that enables more efficient and sustainable use of land and resources. The possibility of local governments placing new development in inappropriate, unsafe, and unplanned locations is not a reasonably foreseeable consequence of ARB setting the regional targets. The use of the PG&E gas pipeline explosion in San Bruno as an example of "the result of aging, overburdened infrastructure in densely populated areas" is inappropriate.

Demands that may arise for increased service capacity, as a result of local land use decisions to increase the amount of allowable development, are not directly related to the establishment of regional targets. As explained in response to Comments 10, 43, 47, 73, the targets are not mandates. The regional targets do not dictate how growth and development will be distributed across the state, local governments are not required to make land use decisions consistent with any adopted SCS or APS, and ARB cannot anticipate what type of development patterns will result from MPO-driven planning strategies.

The commenter's assertion that the regional targets will cause increased development in small MPO and non-MPO areas, bringing "associated demands for major new utilities and services in areas not currently able to accommodate this level of growth," is unsupported by any evidence. ARB disagrees that the regional targets will force development into non-MPO areas (see response to Comments 20, 21, and 24).

There is insufficient information available at this time to enable analysis of the types of utility and service expansions that might be needed, if any, and their associated construction and operation impacts. The FED clearly explains why these impacts are difficult to predict given the numerous and

varied compliance options available to meet the regional targets. ARB is not able to predict or speculate about either the extent of the impacts or the specific locations where these impacts may occur. Whether new services, or expansion of existing services, will be needed and what their impacts might be, must be determined based on the outcome of regional and local land use plans. See also responses to Comments 4, 6, 8, 10, and 16.

Comment 53: Commenter asserts the FED needs to analyze the potential noise pollution impacts that may result from attempting to implement the regional targets.

Response: The FED clearly states why the nature and extent of these impacts is difficult to predict given the numerous and varied compliance options available to meet the regional targets. There is insufficient information available at this time to enable an analysis of potential site specific noise impacts. ARB cannot predict or speculate about either the extent of the impacts or the specific locations where these impacts may occur. Noise pollution impacts and mitigation measures will need to be determined based on the outcome of regional and local land use plans. See also responses to Comments 4, 6, 8, 10 and 16.

Comment 54: Commenter asserts the FED needs to analyze new sources of light and glare, as well as the placement of sensitive receptors near existing sources that may result from the regional targets.

Response: The FED clearly states why the nature and extent of these impacts is difficult to predict given the numerous and varied compliance options available to meet the regional targets. There is insufficient information available at this time to enable an analysis of potential site specific light and glare impacts. ARB cannot predict or speculate about either the extent of the impacts or the specific locations where these impacts may occur. Light and glare impacts will need to be determined based on the outcome of regional and local land use plans. See also responses to Comments 4, 6, 8, 10 and 16.

Comment 55: Commenter asserts that the FED must analyze how the visual character of communities throughout the state will be impacted by attempting to implement the proposed regional targets, as well as include details about where aesthetic and visual impacts might occur.

Response: The FED clearly states why the nature and extent of these impacts is difficult to predict given the numerous and varied compliance options available to meet the regional targets. There is insufficient information available at this time to enable an analysis of potential site specific light and glare impacts. ARB cannot predict or speculate about

either the extent of the impacts or the specific locations where these impacts may occur. Aesthetic and visual impacts will need to be determined based on the outcome of regional and local land use plans. See also responses to Comments 4, 6, 8, 10 and 16.

Comment 56: Commenter states that the FED's analysis of growth-inducing impacts is inadequate. Commenter asserts that the FED must consider how the proposed regional targets will impact growth patterns and include analysis of how regional targets can indirectly require construction of new facilities, as well as consider how limiting development in one area can displace development to other areas.

Response: ARB does recognize the potential for impacts to growth pattern and displacement of residents and/or businesses due to the regional targets as part of its discussion of potential project-level adverse impacts.

See also responses to Comments 4, 10, 20, and 24. As noted in these responses, ARB cannot anticipate what development policies, if any, will be adopted and implemented at the regional or local level, and therefore, cannot and did not speculate about what changes would occur in California's development patterns. Furthermore, ARB disagrees with the commenter's premises that targets would necessarily result in increased sprawl in non-MPO and small MPO areas of the state, and shift development patterns to less developed areas of the state (see response to Comment 20).

Commenter demonstrates a lack of understanding regarding the purpose and function of the regional targets. By setting regional targets, the ARB does not dictate any changes in land use, force changes in land use patterns, require denser urban development, or relocation of existing residents. The targets set goals that MPOs must try to achieve, by developing a regional plan that integrates transportation, housing and land use policies with the intent of reducing greenhouse gas emissions from passenger vehicles. The regional plans that MPOs eventually develop and adopt, with full public participation and without oversight by ARB, could potentially call for changes in land use patterns, greater development densities, and redevelopment of existing property; however, those local decisions cannot be predetermined or anticipated by ARB. Whether, and to what extent land use patterns and development densities may change as a result of adoption of regional SCSs or APSs, will dictate the scope of the environmental analysis that the MPOs will perform before adopting those SCSs or APSs.

Comment 57: The FED must propose and describe mitigation measures to minimize the significant environmental effects caused by the Project.

Response: The FED describes potential mitigation measures on pages 16 through 18. As stated on page 16 of the FED, “The following are general mitigation strategies that could be employed to mitigate the potential adverse impacts identified in section III.E. above. ARB does not have the authority to implement any of the following mitigation measures, as these measures are the responsibility and within the control of regional and local agencies that may act later to implement the Regional Targets through adoption of regional and local plans. In addition, the selection of appropriate mitigation measures must be made by the regional or local agency in the context of the particular action being proposed.” CEQA Guidelines section 15126.4 states that if a lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. In spite of this, the FED made a good faith attempt to disclose, generally, the types of mitigation strategies that might be appropriately and effectively employed by regional and local agencies as they take future actions to implement the Regional Targets. See also response to Comment 36.

Comment 58: ARB improperly defers formulation of mitigation measures to MPOs, cities and counties, and has an obligation to analyze mitigation measures.

Response: The commenter refers to the FED’s list of “possible regional target compliance measures” (FED at pages 8-10) as evidence that ARB has improperly deferred formulation of mitigation measures. The commenter misunderstands the purpose of the list of possible compliance measures; the list is provided to demonstrate the high degree of flexibility that MPOs have in developing their regional plans and to explain why ARB cannot speculate about or predict the nature of the SCSs or APSs that may eventually be adopted by each of the 18 MPOs. The commenter cites *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433 to support its allegation that ARB has failed to analyze mitigation measures by improperly deferring mitigation. The citation references a page that is not contained within that case (p. 422); furthermore this case does not stand for the proposition alleged by commenter.

The other case cited by the commenter, *City of Marina v. Board of Trustees of the California State University* 39 Cal.4th 341 also does not support commenter’s assertion. The relevant portion of the case (at p. 374-375) states:

A finding by a lead agency under Public Resources Code section 21081, subdivision (a)(2), disclaiming the responsibility to mitigate environmental effects is permissible only when the other agency said to have responsibility has

exclusive responsibility. As the CEQA Guidelines explain, “[t]he finding in subsection (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives.” (CEQA Guidelines, § 15091, subd. (c).) The Guidelines’ logical interpretation of CEQA on this point “avoids the problem of agencies deferring to each other, with the result that no agency deals with the problem. This result would be contrary to the strong policy [requiring the mitigation or avoidance of significant environmental effects] declared in Sections 21002 and 21002.1 of the statute.” (Discussion of Resources Agency following CEQA Guidelines, § 15091; see also 1 Kostka, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2005) § 17.19, pp. 821-823.)

Contrary to commenter’s assertion, local land use agencies *do* have exclusive jurisdiction over local land use decisions, including the ability to approve local projects and require mitigation for impacts associated with those projects. ARB cannot provide a more detailed analysis of potential project level impacts (see response to Comments 4, 6, 8, 10, 12, 16, and 42), cannot propose specific mitigation measures for as of yet unknown project level impacts, and cannot propose or implement measures because this is within the responsibility and control of regional and local agencies that may act later to implement the Regional Targets through adoption of regional and local plans. See response to Comments 57 and 61. And conversely, ARB does *not* have concurrent jurisdiction to impose those same general or specific mitigation measures identified in the FED. Therefore, ARB has properly disclaimed responsibility to mitigate potential environmental effects in accordance with Public Resources Code section 21081, subdivision (a)(2).

The commenter also asserts that ARB can use the information from previously adopted RTP EIRs as the basis for developing specific mitigation measures for the Proposed Targets. ARB disagrees. ARB cannot assume that future RTPs will have the same types of impacts or mitigation measures as previously adopted RTPs. Furthermore, the nature of the project at issue is the setting of regional targets, not the adoption of regional transportation plans. The level of specificity of mitigation measures for RTPs is far more detailed than is possible for the programmatic review associated with setting the targets.

Comment 59: The agency regulates both air emissions and volume of traffic, so mitigation measures are within the agency’s authority to recommend.

Response: The level of specificity of analysis required by CEQA is dependent on the nature of the project. It is not reasonable to expect ARB to determine what types of building setbacks might be necessary, much less to impose those setback requirements on individual development proposals that may come before local decision makers. ARB does not have regulatory authority over volume of traffic, noise or aesthetic impacts; the commenter is in error. Development-specific impacts and associated mitigation measures can only be developed and imposed by MPOs and local governments at a later date, after more information is available regarding the nature of land use and transportation plans that may be adopted by regional and local agencies.

Comment 60: Commenter asserts the FED should discuss how criteria should be established for the development of new town centers to address environmental impacts from shifting development to previously undisturbed areas.

Response: ARB disagrees with the commenter's assertion that development will be shifted to previously undisturbed areas (see response to Comments 20, 21, 22, 24 and 56). The commenter has provided no evidence to support the contention that new town centers will result from the establishment of regional targets. Furthermore, ARB has no authority to develop criteria for new town centers; this is the purview of regional and local governments. If cities and counties, in the future exercise of their local land use authority, determine to establish new town centers as a voluntary means of contributing to the achievement of their region's targets, those cities and counties will have the responsibility and authority to develop criteria for the establishment of such new town centers, and to address the associated environmental impacts before approving them.

Comment 61: Lead agencies must have a reasonable basis to conclude that a mitigation measure will be effective; the FED does not provide any evidence to demonstrate that inclusion of the menu of "possible regional target compliance measures" will actually mitigate the project's impacts.

Response: See response to Comments 57 and 58. The commenter misunderstands the role of the "possible compliance measures." These were not presented in the FED as mitigation measures. The list of possible compliance measures is intended to illustrate the myriad of planning policies (transportation and land use strategies) that might be employed by the 18 MPOs in their next RTP, making it highly unreasonable for ARB to anticipate what impacts might result from those future RTPs.

The cases cited in this comment are not on point. These cases consider whether there was sufficient evidence in the record to support the agency's determination that mitigation measures found in an

environmental impact report were feasible or effective in remedying identified potentially significant impacts. (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1989) 209 Cal.App.3d 1502, 1522; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116.) ARB is not adopting any mitigation measures because any potential mitigation measures are outside the agency's jurisdiction to impose or enforce. Therefore, no mitigation monitoring or enforcement is provided or required.

Comment 62: This comment asserts that the alternatives analysis is inconsistent with the purpose of CEQA and fails to identify an alternative that reduces or avoids significant environmental impacts. (This comment prefaces Comments 63-67.)

Response: Staff evaluated a reasonable range of alternatives to the proposed regulation as required by the CEQA guidelines. A range of alternatives analyzed in an environmental document is governed by the "rule of reason," requiring evaluation of those alternatives "necessary to permit a reasoned choice." (CEQA Guidelines § 15126, subd. (f)). ARB analyzed five alternatives to the proposed project, including the required "No Project Alternative", as well as substantially increased targets, substantially decreased targets, and two different types of target metric than proposed. See response to Comments 67 and 75 which provides reasoning for not analyzing an alternative that sets targets consistent with the Scoping Plan.

Because ARB engaged in a extensive detailed bottom-up approach for setting the proposed targets, considered the advice from multiple agencies and organizations and ensured that the most thorough and pertinent information was available to the decision makers and the public, environmental considerations were incorporated into the project design. (See CEQA Guidelines § 15004.) Therefore, the range of environmental alternatives offering environmental advantages compared to the project is necessarily narrower. (See *Mira Mar Mobil Community v. City of Oceanside* (2004) 119 Cal.App. 4th 477 [analysis of three potentially feasible alternatives was sufficient (even when finally rejected as infeasible) where regulations and physical constraints of land set limits on variation of project design and modifications requested during the public review were incorporated into project].)

Comment 63: This comment asserts that because Alternative 2 is vague and the analysis is cursory, it fails to provide information necessary to select between alternatives, and that "Alternative 2 essentially reflects the proposed project" because the proposed targets are too high.

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Response: Alternative 2 does not reflect the proposed project, but rather much higher targets than those proposed. The FED analyzed the potential impacts of higher targets broadly to the extent that is reasonably feasible in this programmatic level document and based on the limited information available to ARB at this time. (See response to comments 4, 5 and 6.) An alternatives analysis may include an alternative that may provide greater project benefits at increased environmental costs in order to consider the policy trade-offs that arise in consideration of the project and its alternatives. (See eg. *Tracy First v. City of Tracy* (2009) 177 Cal.App. 4th 912.) Alternative 2 was analyzed to consider targets set higher to achieve greater GHG emissions reductions. The analysis revealed, however, that the potential gains that could possibly be achieved by substantially higher targets were less likely to come to fruition than the proposed targets and/or lead to greater environmental impacts. (See FED pg. 20-21.)

ARB disagrees with commenter's view that the proposed targets will result in the types of impacts identified in Alternative 2. (See response to Comments 17, 19, and 21.)

Comment 64: This comment asserts that Alternative 3 is poorly defined and the analysis of the alternative does not provide decision makers with meaningful information as required by CEQA.

Response: See response to Comments 62 and 63.

Comment 65: This comment asserts that the FED should have identified the environmentally superior alternative as required by CEQA Guidelines section 15126.6, subdivision (e)(2).

Response: CEQA Guidelines section 15126.6 interprets Public Resources Code section 21100, which falls in Chapter 3 of the CEQA statutes. ARB is exempt from this chapter due to certification of its regulatory program under Public Resources Code section 21080.5. Under CEQA Section 21080.5 and ARB regulations (Cal.Code Reg., tit. 17, . § 60006), ARB must discuss feasible alternatives that would substantially reduce adverse impacts. There is no requirement for ARB to identify an environmentally superior alternative.

Furthermore, even if section 15126.6 did apply, that section only requires an EIR to identify the environmentally superior alternative in the context of the discussion of the no project alternative. As explained by a leading treatise:

“If the no project alternative is the environmentally superior alternative, then the EIR must also identify an environmentally

superior alternative from among the other alternatives. When none of the alternatives is clearly environmentally superior to the project, it should be sufficient for the EIR to explain the environmental advantages and disadvantages of each alternative in comparison to the project.” (1 Practice Under the Environmental Quality Act, Kostka & Zischke, § 15.37)

The analysis of project alternatives in the FED does not identify the no project as the environmentally superior alternative. Therefore, even if section 15126.6, subdivision (e)(2) were applicable to functional equivalent documents produced under ARB’s certified regulatory program, it does not apply to this FED.

Comment 66: Commenter asserts FED Alternatives 4 and 5 do not represent alternatives that would eliminate or reduce the project’s environmental impacts.

Response: In compliance with the requirements of CEQA, ARB analyzed a reasonable range of alternatives. These included 3 other alternatives besides a no project alternative. See response to Comments 62 and 63. The FED analyzed alternative forms of the target metric (an absolute emissions metric and a vehicle miles traveled metric instead of a per capita reduction metric) which had been suggested through public input at workshops and hearings. Alternatives 4 and 5 attempted to provide options to the proposed target metric that might be more readily accepted or more easily calculated by the regions. After analysis in the FED, they were rejected as infeasible (see FED pages 21-23).

Comment 67: This comment asserts the FED must consider an alternative to the Proposed Targets which is consistent with the Scoping Plan and with targets that MPOs indicate are achievable.

Response: ARB’s proposed targets are consistent with the targets that MPOs have recommended to the Board and/or which the MPO data and analysis indicate are achievable.

The FED does not address an alternative to the proposed targets which is consistent with the Scoping Plan as the commenter wishes for the following reasons.

The 2008 Scoping Plan was not intended to and cannot dictate the amount of reductions to be achieved from setting SB 375 targets. The Scoping Plan set forth a placeholder of 5 MMT CO₂ reductions from land-use-related transportation, which was based on a review of modeling studies from California, other states, and Europe. The Scoping Plan, at page 49, clearly anticipated that the estimate of 5 MMT would be replaced by the targets established under SB 375:

“The ARB estimate of the statewide benefit of regional transportation-related greenhouse gas emissions reduction targets is based on analysis of research results quantifying the effects of land use and transportation strategies. The emissions reduction number in Table 11 [indicating 5 MMT] is not the statewide metric for regional targets that must be developed as SB 375 is implemented. The emissions target will ultimately be determined during the SB 375 process.”

Board Resolution 08-47, adopting the Scoping Plan on December 11, 2008, affirms the placeholder nature of the 5 MMT estimate (at page 9):

“Be it further resolved that it is the Board’s intent that the greenhouse gas emission reductions associated with the SB 375 regional targets represent the most ambitious achievable targets. The estimated reductions in the Scoping Plan will be adjusted to reflect the outcome of the Board’s decision on SB 375 targets.”

Board Resolution 10-31, approving the Regional Targets on September 23, 2010, clearly states (at page 4):

“The Board is not bound or limited by AB 32 in establishing the Regional Target levels pursuant to SB375” and “the potential greenhouse gas emission reductions from the transportation and land use sector that were identified nearly two years ago in the Climate Change Scoping Plan.... are useful but not determinative guidance for setting Regional Targets.”

To identify an alternative in the FED which corresponds to the Scoping Plan estimate of 5 MMT CO₂ reductions would be arbitrary and inconsistent with the intent of both the Scoping Plan and SB 375.

There are also several technical reasons why it would be inappropriate to base a project alternative on the Scoping Plan estimate for the land use and transportation sector, including:

(1) The methodologies for quantifying potential greenhouse gas emission reductions were very different. The Scoping Plan estimate was developed using a statewide top-down approach using a 2020 business-as-usual (BAU) baseline; the Proposed Targets were developed using a bottom-up process that relied on region-specific data and a 2005 base year.

(2) The Scoping Plan estimate was based on a statewide inventory; the Proposed Targets were not. The statewide inventory included

all trips made by the light-duty fleet; the targets are based on the light-duty fleet inventory for just the 18 MPOs and do not include all the inter-regional trips.

(3) The methodologies used different socioeconomic assumptions. The inventory used for calculating Proposed Targets reflected recessionary impacts in many of the regions, and the targets were developed using regional modeling assumptions that have been updated since the Scoping Plan was adopted.

CEQA requires an analysis of a reasonable range of feasible alternative to the proposed project. The FED does contain a reasonable range of regional targets. An alternative that reflects the Scoping Plan reduction estimate/placeholder would not be reasonable or feasible for the above reasons.

Comment 68: Commenter asserts ARB did not provide sufficient time for review and comment of the FED or for recirculation of a revised FED, citing the FED as having required written comments to be submitted 10 days prior to the September 23, 2010, Board meeting.

Response: Contrary to the commenter's quote, ARB provided at least 45 days for public comment as required. The public notice of the September 23, 2010, Board meeting, and the first page of the FED released on August 9, 2010 state:

"Interested members of the public may present comments orally or in writing at the (September 23) meeting."

"Comments may also be submitted by postal mail or by electronic submittal before the meeting. To be considered by the Board, written comment submissions on the Functional Equivalent Document that are not physically submitted at the meeting must be received no later than 5:00 pm, September 22, 2010, and addressed to"

"The Board requests, but does not require 20 copies of any written submission. Also, ARB requests that written and e-mail statements be filed at least 10 days prior to the meeting so that ARB staff and Board members have time to fully consider each comment."

None of the above statements in either the public notice of the September 23 Board meeting or the FED indicate comments must be submitted 10 days prior to the September 23 meeting. The 45-day review period was provided, as required by law, beginning on August 9, 2010 and ending at the close of the Board hearing on September 23, 2010.

Comment 69: This comment asserts that ARB's schedule to consider the proposed targets does not allow time for a meaningful response to comments.

Response: In Board Resolution 10-31 the Board approved the adoption of the proposed targets and made certain CEQA findings based on all evidence in the record, including all public comments on the FED. The Board's Resolution also directed the Executive Officer as decision maker to prepare and approve written responses to significant environmental issues raised in comments and either adopt the targets with feasible mitigation or alternatives as needed or return to the Board for further consideration. Thus there was ample time allowing meaningful review of comments and to prepare this response document, which could not be finalized until the condition finalizing the 2035 target (SCAG) was met.

Contrary to commenter's expectation of numerous public comments on the FED, ARB only received two (2) comment letters that raised concerns or questions regarding the environmental analysis. Those two letters, and ARB staff responses, are reflected in this document.

Comment 70: This comment asserts that the FED must be revised and recirculated.

Response: ARB disagrees with the commenter's premises that the FED is inadequate and that the FED fails to provide a stable project description. See responses to Comments 3, 4, 5, 6, 8, 10, 12, 15, and 16.

CEQA requires recirculation of a CEQA document when there has been a substantial change(s) to the draft document. Here, ARB has no evidence that supports a decision to perform additional analysis or make changes in the conclusions about potential significant impacts. Therefore, revision and recirculation of the FED is not warranted.

The commenter's request for revision and recirculation is based on a desire for ARB to modify the regional targets to a more what the commenter believes is a more feasible level; in other words, to change the project description and analyze the new project. See response to Comment 15 (commenter improperly attempts to convert concern over the stringency of the regional targets into an argument that the project is not properly described).

Comment 71: This comment asserts that the FED is procedurally flawed and therefore will be subject to legal challenge under a de novo standard of review and could result in decertification of ARB's Certified Regulatory Program.

Response: The FED was prepared in accordance with CEQA's procedural and substantive requirements, and ARB thoroughly reviewed potential environmental impacts, including these responses to comments raising significant environmental issues.

While ARB disagrees with that portion of the comment suggesting risk of decertification (see response to Comment 72, next), this broader concern does not address any specific issue or question regarding the adequacy of the FED and therefore does not require a response.

Comment 72: Commenter asserts ARB's regulatory program exemption to regulate ambient air quality does not extend to the regulation of greenhouse gas emissions.

Response: This comment does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED and therefore does not require a response. It questions ARB's ability to rely on its certified regulatory program to prepare a functional equivalent document for this project.

ARB's regulatory program certified by the Natural Resources Agency pursuant to Public Resources Code Section 21080.5 covers approval of plans that are used as part of the regulatory program for the protection and enhancement of ambient air quality in California. (CEQA Guidelines § 15251.) Approving greenhouse gas reduction targets is such a plan, as the targets are projected to reduce California's contribution to greenhouse gas emissions that increase temperatures and exacerbate long-standing smog and particulate matter problems in California. (See 74 Fed.Reg. 32744, 32763-66 (July 8, 2009) [EPA granting California's greenhouse gas emission standard waiver request based in part on ARB's demonstration of exacerbated impacts in California].) ARB thoroughly reviewed potential environmental impacts, including these responses to comments raising significant environmental issues, as required under its certified program regulations (Cal. Code Regs., tit. 17 § 60005-60007.) It is irrelevant that plans for reducing greenhouse gases were not part of ARB's air pollution control program at the time it was certified. ARB has not sought, and the Resources Agency has not otherwise initiated, any further review of ARB's regulatory program pursuant to Public Resources Code section 21080.5. (See *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 129 [agency may continue using functional equivalent document absent contrary Resources Agency determination].) Even if such a review action were pending, the review by the Secretary for the Natural Resources Agency is limited to review of program-level factors and cannot extend to individual decisions such as the subject approval of the regional targets.

Comment 73: This comment asserts that ARB has violated the California Administrative Procedure Act. (This comment prefaces Comments 74-82.)

Response: Because this comment does not raise a significant environmental issue and does not state a specific concern or question regarding the sufficiency of the environmental analysis prepared for the proposed project, it does not require a response. However, ARB staff provides the following information to clarify that the greenhouse gas reduction targets are not a regulation under the California Administrative Procedure Act (APA).

The APA applies to regulations which include “rules, regulation, order or standard of general application ...adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” (Govt. Code §11342.600.) Approval of regional targets under SB375 does not constitute adoption of regulations under the APA. SB 375 requires the regional transportation plan for regions of the state with a metropolitan planning organization to adopt a sustainable communities strategy, as part of its regional transportation plan, designed to achieve certain goals for the reduction of greenhouse gas emissions from automobiles and light trucks in a region. The bill also requires ARB to provide each affected region with greenhouse gas emission reduction targets for the automobile and light truck sector for 2020 and 3035.

SB 375 creates a limited role for ARB – to set the targets. The statute sets out the other requirements for MPOs directly. The targets ARB sets are simply goals for MPOs to use in their RTP planning processes, whether they are achieved through an SCS or an APS. ARB is fulfilling its requirement under the statute to set the targets. ARB is not creating a rule, regulation, order or standard requiring the MPOs to meet the targets. All requirements for the MPOs are established directly by the statute. Furthermore, the statute specifies that MPOs must only develop a plan, through a sustainable communities strategy or alternative planning strategy, to meet the targets set by ARB. The MPOs are not required to meet the targets either by ARB or the statute. This is made clear in the ARB Board Resolution 10-31 which states:

“Whereas, the Regional Targets identify the overall regional greenhouse gas emission reductions to be planned for through an MPO’s sustainable communities strategy, or alternative planning strategy, if applicable; Whereas, while affected MPOs must develop a plan to meet the Regional Targets through a sustainable communities strategy or an alternative planning strategy, SB 375 encourages but does not require MPOs to achieve their targets;”
(Resolution 10-31 at page 2)

It is SB 375, not ARB, that determines whether or not MPOs must meet the targets, and the lack of requirement is apparent on its face.

The ARB Board Resolution 10-31 states “the proposed targets, if adopted, will establish standards in the form of goals for MPOs” (Resolution 10-31 at page 7). A more accurate phrasing would have been that the proposed targets are part of a “plan” because the targets are just that; a “plan” for MPOs to meet a certain goal. This was evident in the staff presentation to the Board on September 23, 2010, and in the plain language of the Resolution 10-31 (noted in the above inset citation).

Additionally, in setting the targets, ARB cannot alter, amend or enlarge the scope of SB 375. An agency does not have the authority to alter or amend a statute or enlarge or impair its scope. (*Interinsurance Exchange of Automobile Club v. Superior Court* (2007) 148 Cal.App.4th 1218, 1236 citing *Morris v. Williams* (1967) 67 Cal.2d 733, 748 and *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545.) Therefore, ARB cannot transform the targets, as a goal for MPOs, into mandatory enforceable standards requiring regulations promulgated under the APA.

Comment 74: This comment asserts that ARB’s selection of the regional targets is arbitrary and capricious and lacking in evidentiary support.

Response: ARB disagrees. Targets proposed by ARB are supported by evidence in the record developed prior to and during the September 23, 2010 ARB Board Meeting. ARB’s approach to target setting is clearly discussed in the August 9, 2010 staff report which accompanied the August 9, 2010 FED. See following responses to Comments 75 through 80 regarding specific assertions by the commenter regarding the selection of proposed regional targets.

Board Resolution 10-31 clearly identifies the substantial input and information ARB considered, and the independent analysis it performed, before finding that the proposed targets are necessary and appropriate (see Resolution 10-31, pages 7-10).

The commenter cites a number of cases asserting that courts will invalidate regulations or fees when an agency fails to provide evidentiary support. Because this comment does not raise a significant environmental issue and does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED, it does not require a response. See also response to Comment 73; as discussed there, approval of regional targets under SB 375 does not constitute adoption of a regulation under the APA.

Comment 75: This comment asserts that the regional targets should be set at a level consistent with what the Scoping Plan determined is a realistic goal.

Response: See response to Comment 67. This comment mirrors the commenter's assertion that the FED must consider an alternative to the Proposed Targets which is consistent with the Scoping Plan. As discussed above, it is inappropriate to base target setting on the Scoping Plan's placeholder estimate of emission reductions from the transportation and land use sector.

Comment 76: This comment asserts that the regional targets should be consistent with what MPOs determined was feasible.

Response: The commenter is taking issue with the proposed targets and asserts that they are not consistent with the analyses done by the MPOs for target setting. Furthermore, the commenter asserts that based on the timeframe during which MPOs were providing information to ARB and ARB was developing its proposed Regional Targets and FED, it would have been impossible for ARB to sufficiently analyze the information provided by MPOs and consider the associated environmental impacts. ARB disagrees for the following reasons.

The sufficiency of proposed targets and the FED is not dictated by the amount of time that ARB took to prepare them. ARB carefully evaluated all the information before it, including the data and analyses provided by the MPOs and input from a wide range of stakeholders, and used its independent judgment to consider alternative approaches to target setting and their impacts. As a result, ARB proposed the targets which it considers to meet the goals of the statute and can reasonably be expected to be achievable. The final ARB process of preparing proposed targets occurred at the end of a collaborative two year process during which ARB became very familiar with the inputs and methodologies MPOs were using to generate their suggested targets.

Furthermore, the comment incorrectly asserts that the proposed targets should be the product of MPO technical analyses only, and because they are not, the targets are not feasible. While ARB agrees that MPO technical analyses should be a factor in assessing whether targets can reasonably be expected to be achievable, ARB believes that an MPO's target recommendations should be a factor as well. In regular regional planning processes, MPO technical analyses are used as one resource for informing decisions made by their boards. These technical analyses, however, are limited to current capabilities. In recognition of this, Boards also rely on input from their public processes on preferred future policy direction, information from staff on future technical tool developments, and funding opportunities, in making their policy decisions. For these reasons,

in exercising its independent judgment ARB staff proposed and the Board approved targets that considered more than merely the MPOs' technical analyses.

Comment 77: This comment asserts that the basis of ARB's FED must be an analysis of how Regional Targets will affect each MPO's current RTP - the environmental impacts that may arise from the change in the RTPs to meet the targets.

Response: CEQA requires that the impacts of a proposed project be compared to the actual environmental conditions at the time of commencement of the analysis. The impacts should not be compared to conditions defined by a plan or regulatory framework. (*Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320-321.) The commenter's suggestion that ARB compare potential impacts arising from changes in RTPs would not comply with CEQA's requirements. The commenter's suggested analysis would compare the potential impacts of the project to conditions defined by a plan, the RTP, rather than the existing environmental conditions.

Furthermore, an analysis of this type would have required ARB to make arbitrary assumptions about what future RTPs in each region would look like. While ARB could have theoretically analyzed the impacts of the Proposed Targets based on the target-setting assumptions provided by the MPOs, it would be improper and unreasonable for ARB to expect that future RTPs would be based on the same land use and transportation assumptions as were used for the target-setting process. The August 9, 2010 staff report and the FED clearly indicate that the target-setting scenarios are not the same as future regional plans and should not be viewed as such; each MPO will need to develop their plan through a separate process that involves public participation and local decisions about land use, transportation, and housing policies. Furthermore, using these assumptions could potentially interfere with the ability of individual MPOs to craft their own unique RTPs in the future, by prejudicing the outcome of independent MPO planning processes.

Comment 78: This comment asserts the regional targets for MTC are not supported by MTC's analysis.

Response: This comment does not state a specific concern or question regarding the sufficiency of the environmental analysis contained in the FED and therefore does not require a response.

The comment details issues with the feasibility and policy choice of ARB's target for the Bay Area. As part of the target setting process, ARB staff recognized the expertise of the MPOs, and that the scenarios and

recommendations submitted were the result of both policy and technical considerations at the local and regional levels. See letter from Steve Heminger, MTC Executive Director, to the Chairman of the ARB, dated September 20, 2010, rebutting BIA's arguments that the MTC target setting analysis was "wholly unrealistic" and that the targets recommended by the MTC Board should be rejected by ARB.⁶ See also response to Comment 76.

Comment 79: This comment asserts the regional targets suggested for SCAG are not supported by SCAG's analysis, and were consequently rejected by a vote of SCAG's Regional Council on September 2, 2010.

Response: See response to Comment 76. As part of the target setting process, ARB staff recognized the expertise of the MPOs, and that the scenarios and recommendations submitted were the result of both policy and technical considerations at the local and regional levels.

As stated in the August 9, 2010 staff report with respect to SCAG's recommended 2035 target reduction range (5-6%), both ARB and MPO staff noted that it was unexpectedly lower than SCAG's recommended reduction target for 2020 (8%). Given this anomaly, ARB proposed a target of 13% per capita with the expectation that the SCAG Regional Council would discuss this target further at their September 2, 2010 meeting prior to ARB action on September 23, 2010, and bring clarifying information forward at that time.

The commenter asserts that the SCAG Regional Council "recently voted to outright reject ARB's Targets for the region, based on SCAG's careful modeling and analysis of what is reasonably achievable for the region." ARB disagrees with this characterization of the Regional Council's September 2, 2010 action. The commenter omits that as part of its action on this item on September 2, the SCAG Regional Council identified 11 recommendations which would provide the basis for SCAG to accept higher targets. SCAG staff had tested various transportation and pricing strategies during the month of August 2010 that demonstrated a potential to achieve a 13% reduction in greenhouse gas emissions if sufficient resources were made available in the region. For this reason, SCAG staff recommended to its Regional Council on September 2, 2010 that the MPO accept ARB's proposed targets of 8% and 13%, respectively, if sufficient resources could be identified.⁷

⁶ Letter dated September 20, 2010, from Steve Heminger to Mary Nichols, available at <http://www.arb.ca.gov/lists/2010sb375/515-heminger.pdf>

⁷ SCAG Staff Report on "Final Draft Regional Targets" presented to the Regional Council on September 2, 2010. <http://www.scag.ca.gov/committees/pdf/rc/2010/sep/090210jointRC-PC-attachment.pdf>

Comment 80: This comment asserts that there is no evidence in the FED to support the targets selected for each region, or that regional characteristics were considered in target setting.

Response: This comment does not raise a significant environmental issue and does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED and does not require a response. The following information is provided to clarify that ARB staff did take into consideration the relevant characteristics and differences among the MPO regions when proposing and approving regional targets. The FED's description of the proposed project, at page 2, references the August 9, 2010 ARB staff report which provides the basis for ARB's proposed targets for each region. The August 9 staff report, and the presentation by ARB staff at the September 23, 2010, Board meeting, clearly establish that ARB was sensitive to the differences among MPO regions. Page 10 of the August 9 staff report states:

"In the process of developing proposed targets, ARB staff received public comment on several topics that should be considered in target setting. The written comments can be found on the ARB website¹¹. Of the more technical considerations, the following stand out: regional population, existing land use and travel patterns, and the ability of transportation models to fully account for the benefit of land use and transportation strategies that reduce greenhouse gas emissions. These issues are important statewide but are also reflective of regional differences. Population, growth rates, regional development and travel patterns, as well as technical resources and experience, have all been identified as factors that impact how much change can be expected from a given region over a period of time."

If ARB had not been sensitive to differences among the regions and respectful of their unique circumstances, it could have accepted the recommendation of the RTAC to establish one statewide uniform target for all of the 18 MPOs, with limited ability for an MPO to deviate from the statewide uniform target under a "reasonably tough test." (RTAC report at page 12)

Comment 81: This comment asserts that the proposed targets should be consistent with the goals of various CEQA guidance documents being developed by air districts, and that the proposed targets would produce contradictory results to the Bay Area Air Quality Management District's (BAAQMD) CEQA Guidelines.

Response: This comment does not raise a significant environmental issue and does not state a specific concern or question regarding the sufficiency

of the analysis contained in the FED and does not require a response. However, clarification on a number of points is warranted.

ARB is fully aware of the work being done by air districts to develop CEQA thresholds of significance for greenhouse gas emissions. Those local thresholds were prepared consistent with the state CEQA Guidelines provisions at sections 15064.4 and 15064.7 which encourage lead agencies to adopt thresholds of significance. The commenter implies that the methodology used by ARB for target setting should be “aligned” with the approaches used by air districts for CEQA thresholds without justification for such an alignment.

The comment implies a relationship between CEQA thresholds of significance and the regional targets set by ARB. There is none. The regional targets set a greenhouse gas reduction goal which must be considered by regional planning agencies as they develop integrated land use, transportation and housing plans. The expectation is that the targets will be met by the region as a whole, over time, through a collaborative and iterative planning process. The goal of CEQA guidance, and CEQA thresholds of significance in particular, is to determine whether a project may have a potentially significant adverse impact on the environment that would trigger the need for preparation of an EIR instead of a negative declaration. The function and operation of targets are extremely different from CEQA thresholds which are quantitative or qualitative levels of an impact over which the impact is presumed to be significant.

There are only 2 air districts that have developed CEQA guidance on determining thresholds of significance for greenhouse gas emissions, and they are significantly different in stringency. The commenter expresses a preference for the less stringent guidance provided by the San Joaquin Valley APCD over the guidance provided by the Bay Area AQMD, and faults ARB for not using the “sound Scoping Plan-derived approach utilized by the SJVAPCD” for setting regional targets. See response to Comment 67 which explains why regional targets were not, need not, and should not, be based on the Scoping Plan.

Commenter states that “the regional targets are not consistent with the goals of these various guidance documents.” As explained above, the “goals” of the regional targets are very different from the goals of CEQA thresholds of significance. Furthermore, the guidance documents produced by the two air districts are significantly different in approach and stringency. Therefore, it appears infeasible for the regional targets to be consistent with CEQA thresholds in general and the two CEQA guidance documents in particular.

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As explained in the FED, independent CEQA analysis will need to be performed by each MPO as it develops and adopts its next RTP in compliance with SB 375; this means that the determination regarding significance of any greenhouse gas emissions from those subsequent RTPs (or “projects”) must be made by each MPO (“lead agency”) in accordance with requirements of state CEQA Guidelines for the analysis of GHG emissions. As clearly stated in the Board Resolution 10-31, the proposed targets are intended to be used “to guide regional planning processes and not to judge the environmental impact of any particular project.” (Resolution 10-31, page 13).

Comment 82: This comment asserts that ARB abdicated its responsibility to consider the environmental impacts of the regional targets in the FED by duplicating analysis from the RTAC report. It further asserts that the targets themselves are inconsistent with the recommendations of the RTAC.

Response: This comment does not raise a significant environmental issue and does not state a specific concern or question regarding the sufficiency of the analysis contained in the FED and therefore does not require a response. However, ARB staff notes the following for the record. It appears contradictory to assert, on the one hand, that ARB “duplicated” information from the RTAC report in its analysis of environmental impacts, and on the other hand, that the ARB’s targets are “inconsistent” with the RTAC recommendations. As explained in the FED, the August 9 staff report referenced in the FED, and Board Resolution 10-31, ARB considered the recommendations of the RTAC and accepted several of the RTAC’s recommendations, including but not limited to, the use of a collaborative, bottom-up process with MPOs for establishing targets, the form/metric for the targets, and the use of modeling tools. ARB’s target setting process was completely transparent and reflected extensive public participation, as recommended by the RTAC. This is evidenced by at least 18 months of collaboration with MPOs, at least 10 public workshops around the state at which significant public input was received and posted on the ARB website, and numerous other presentations by ARB at conferences around the state.

As required by Government Code §65080, subdivision (b)(2)(A)(i), ARB considered the RTAC’s report prior to setting targets. The statute by no means requires ARB to comply wholly with the RTAC recommendations without the independent judgment by ARB; to do so would be to abdicate its responsibility for target setting.

Comment 83: This comment suggests that ARB not adopt the proposed targets on the basis that to do so would invite significant litigation risk.

Response: This comment essentially requests disapproval of the proposed targets, selection of more “achievable” (lower) targets than proposed, and reconsideration of the environmental impacts of the achievable targets. The commenter’s request that an alternative based on the Scoping Plan be analyzed has already been addressed in response to Comment 67. The FED did analyze a project alternative that would establish regional targets that are substantially lower than proposed (see FED Alternative 3). As stated in the FED, at page 21, Alternative 3 “would not only undermine the fundamental statutory objectives for target-setting but might actually worsen the existing baseline situation by allowing CEQA streamlining for business-as-usual development, and potentially causing other environmental impacts association with sprawl development (such as loss of wildlife habitat and agricultural lands).”

Comments Submitted by Kern COG (See attached copy of letter with numbered comments)

Comment 84: This comment suggests an alternative to the proposed target metric of a percent per capita reduction of CO₂ emissions from year 2005.

Response: The suggested alternative would allow MPOs to select one of two target metrics. The two alternatives include the metric proposed by ARB (a percent per capita reduction of CO₂ emissions from a base year of 2005) and a “CO₂ emissions 10% below the statewide average and the numeric pounds of CO₂ per capita is 10% below the region’s 2020 and 2035 baseline emissions (pre-Pavley/LCF).” The reason given for proposing this alternative is that “the percent per capita method creates problems for smaller high growth MPs that can be subject to dramatic percent per capita changes because their population may be doubling every 30-40 years.” The commenter also asserts that “this alternative method reflects the RTAC’s recommendation for a substantial improvement in CO₂ emissions.”

The commenter’s statement that the proposed percent per capita reduction metric puts smaller high-growth MPOs at a disadvantage is inconsistent with the evidence in the record which shows that the proposed target metric is fair to both slow and fast growth regions and it relies on a recent base year (2005) for which reliable information is available for all regions. The target metric proposed by ARB does, in fact, directly address growth rate differences among the regions. As stated in the FED, at page 3, “Addressing growth rate differences between the MPO regions is important that given that growth rates are expected to affect the magnitude of change that any given region can achieve with land use and transportation strategies. The per capita metric ensures that both fast and slow growth regions take reasonable advantage of any

established transit systems and infill opportunity sites to reduce the region's overall regional greenhouse gas emissions." The fairness of the percent per capita metric, regardless of the MPO's size or growth rate, is one of the main reasons that the RTAC recommended this metric to ARB.

Furthermore, the proposed alternative is inconsistent with the RTAC recommendation that the targets result in a substantial reduction in CO₂ emissions. As shown below, the alternative metric proposed by the commenter would not encourage a substantial change from business as usual and would not result in substantial reductions in emissions.

This suggested alternative offers two different methods of meeting the target, which are not equally stringent in their requirements to reduce emissions. The option of a 10 % reduction compared to the statewide average emissions or a 10 % reduction from a future baseline would set a more easily achievable goal, as compared to the proposed percent per capita reduction metric. Therefore, the suggested alternative, in effect, offers MPOs a choice of a more stringent method or a less stringent method, entirely at the MPO's discretion. Providing an option for MPOs to choose a less stringent target essentially establishes the less stringent target as the de facto target. The reason for suggesting this alternative appears to be that the commenting agency is an MPO that would prefer to use the less stringent target metric.

There are several additional reasons why the proposed alternative is problematic. There are two parts to the alternative suggested by the commenter: (1) a 10% reduction from the statewide average emissions, and (2) a 10% reduction in per capita emissions from a future baseline. Requiring the target for small MPOs to be set at 10% below the statewide average would be meaningless because in the small MPO regions, the CO₂ per capita is already below the statewide average. In other words, the suggested alternative would not require a substantial change in the amount of emissions from the current condition; in fact, it might allow for an increase of emissions in some locations.

Requiring a 10% reduction in emissions from future baselines (2020 and 2035) also presents a problem because current travel models used by the smaller MPOs have a high degree of inaccuracy and do not provide reliable projections of future baseline emissions for 2020 and 2035. In addition, the travel models of the smaller MPOs are expected to undergo significant updates in coming years, which will re-establish new future (corrected) baseline emissions for 2020 and 2035, making it possible that a target of 10% reduction from the future baseline could be achieved simply as a matter of model improvement. The MPO, in effect, would not have to implement any changes to business-as-usual planning practices. This would defeat the purpose of setting reduction targets.

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Because the suggested alternative would use a future base year rather than a base year of 2005, it would penalize those MPOs that have already adopted measures that are causing their baseline emissions to go down. Instead, it would reward those MPOs whose baselines are increasing in future years due to a lack of similarly aggressive sustainable planning practices. Both of these outcomes would be contrary to the intent of SB 375.

The suggested alternative does not satisfy the CEQA requirement for analysis of alternatives that meet most of the basic objectives of the proposed project, while resulting in less environmental impacts than the proposed project. Here, the suggested alternative would not meet one of the most important goals of SB 375 (a departure from business-as-usual planning practices that will result in substantial future greenhouse gas reductions), and as discussed in the FED (see Alternative 3, Decrease Proposed Targets Substantially), setting substantially lower targets would result in greater adverse environmental impacts than the Proposed Targets.

For these reasons, ARB staff disagrees that the suggested alternative is a feasible project alternative that should have been analyzed in the FED.

September 22, 2010

VIA EMAIL AND REGULAR MAIL

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Re: Comments on ARB's Draft CEQA Functional Equivalent Document (SCH #2010081021) for Proposed Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375

I. Introduction

The California Building Industry Association (CBIA) submits these comments on the Air Resources Board's (ARB) Functional Equivalent Document (FED) for Proposed Regional Greenhouse Gas (GHG) Emission Reduction Targets for Automobiles and Light Trucks (Regional Targets or Project) Pursuant to Senate Bill 375 (SB 375) on behalf of its 3,500 member companies throughout the state. We have serious concerns regarding the adequacy of the FED's environmental analysis under the California Environmental Quality Act (CEQA), as detailed below, and the unintended, and unevaluated, environmental impacts that result from these proposed Regional Targets, as well as the procedure for adopting the Regional Targets under the Administrative Procedure Act (APA), and the lack of evidence supporting the Regional Targets indicates that it would be arbitrary and capricious for ARB to adopt them.

II. Executive Summary

Though the FED was prepared pursuant to ARB's certified regulatory program, it must still fulfill CEQA's substantive requirements. FED at 1. However, the FED completely fails to provide any meaningful environmental analysis in its shockingly brief *two-page* consideration of environmental impacts. Rather than make a good faith effort to investigate potential impacts, the FED concludes that all impacts are speculative and defers any analysis of the Project's potential environmental impacts to metropolitan planning organizations (MPOs), cities and counties. In addition, the information that is provided is vague, unclear and cursory. ARB's failure to use its best efforts to analyze the Regional Targets is unacceptable given that the Targets sets up mandatory transportation funding criteria for GHG reductions that must be met by sustainable community strategies (SCSs) and alternative planning strategies (APSSs), allowing no regional flexibility to achieve targets, thus making impacts from changed development patterns reasonably foreseeable. Further, the FED's inadequacies are particularly disappointing given that ARB has had two years to adopt targets under SB 375 and analyze impacts under CEQA. Some of the FED's fundamental failures are summarized below:

- ARB has inappropriately deferred all analysis of environmental impacts on grounds of speculation even though the FED admits there will be significant impacts. The Regional Targets impose mandatory transportation funding criteria which has reasonably foreseeable consequences that must be analyzed, not "tiered off" future environmental review;
- While those impacts that are addressed in the FED lack any meaningful analysis, other impacts, including the shifting of development into non-MPO areas, loss of federal transportation funding, and conflicts with existing laws created by unrealistically high Targets are not addressed at all;
- The FED's inclusion of "possible compliance measures" defers the formulation of mitigation and fails to demonstrate that mitigation will be effective and enforceable;
- The alternatives analysis is misleading and vague and fails to satisfy CEQA's mandate to consider a reasonable range of alternatives; and
- ARB has not allowed sufficient time for review, comment and response to comment on the FED.

In failing to proceed according to CEQA, ARB's decision to approve the Regional Targets is subject to legal challenge. Because the document is procedurally flawed, ARB will not be afforded a deferential standard of review if the Regional Targets are challenged in court. In fact, the FED's failures are so fundamental that it could risk de-certification of ARB's certified regulatory program.

Additionally, ARB has violated the California Administrative Procedure Act (APA) by failing to follow rulemaking procedures in adopting the Regional Targets. ARB's proposal to adopt Targets as "guidance" unlawfully avoids meaningful public participation in the rulemaking process as required by the APA. Govt. Code §§ 11340 et. seq.

Beyond the procedural failing, regulations are also invalid if an agency fails to provide support for the regulation adopted. ARB's selection of the Regional Targets is arbitrary and capricious as the Targets lack evidentiary support, and are inconsistent with state and regional analyses and recommendations made by the state Scoping Plan, by regional MPOs, by regional air districts, and by the Regional Targets Advisory Committee (RTAC). In fact, the largest MPO in the state has outright rejected ARB's Targets as inconsistent with what modeling indicates is achievable.

Based on the analysis contained herein, we request that ARB revise the FED to address the many inadequacies. Notably, we request that ARB modify the Regional Targets to a more feasible level consistent with the targets that the evidence available to ARB shows is achievable and that have been under consideration during preparation of the FED. Once achievable targets are selected, ARB must prepare a FED that actually considers the environmental impacts of those targets. The FED must present the targets and explain the environmental impacts in a manner that the public can understand, consistent with the fundamental purpose of CEQA.

Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564 (CEQA "protect[s] not only the environment but also informed self-government"); *Mountain Lion Foundation* 16 Cal. 4th 105, 133 (CEQA ensures that agencies "fully consider the information necessary to render decisions that intelligently take into account the environmental consequences. It also promotes the policy of citizen input underlying CEQA.")

III. ARB's FED Does Not Meet the Requirements of the Certified Regulatory Program under CEQA.

A. CEQA Exempts Certified Regulatory Programs from Procedural Requirements, But Not from CEQA's Policy Goals and Substantive Requirements.

As noted above, CEQA contains an exemption for certain state agencies' regulatory programs that have been certified as meeting criteria for conducting environmental review independent of CEQA's documentation requirements. Pub. Res. Code §21080.5; 14 C.C.R. §§ 15250-15253. However, this is not an absolute exemption from CEQA. Certified regulatory programs are required to comply with CEQA's substantive requirements to analyze and mitigate a project's environmental impacts. 14 C.C.R. §15252(a)(2); *Ebbetts Pass Forest Watch v. Dep't. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 943. CEQA requires government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project. Pub. Res. Code §21002. Accordingly, documents prepared under certified regulatory programs are still subject to these important policies and requirements.

Courts have characterized certified agencies' environmental documents as the functional equivalents of EIRs because the information required essentially duplicates that required for an EIR or negative declaration. *Citizens for Non-Toxic Pest Control v. Dep't. of Food & Agric.* (1986) 187 Cal.App.3d 1575, 1586. ARB's regulations for plans or documents prepared under its certified regulatory program (ARB's regulations) mirror CEQA's requirements. 15 C.C.R. §6005(b). As discussed below, the FED fails to satisfy ARB's own regulations and CEQA's policy goals and substantive requirements.

B. ARB Has Deferred All Analysis of Environmental Impacts on Grounds of Speculation Even Though the FED Admits There Will Be Significant Impacts.

ARB defers all analysis of environmental impacts, even though it acknowledged there would be significant impacts (FED at 1, 13), based on its unsupported claim that determining impacts is speculative at this time (FED at 1). However, the FED is required to provide detailed information on the Project's potential significant effects on the environment and a thorough investigation is required. 14 C.C.R. §§15145 and 15252(a)(2); see *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1214, 1236 (board failed to proceed in manner prescribed by CEQA in evaluating and approving a timber harvest plan in the absence of analysis regarding impacts on old growth trees). The CEQA Guidelines recognize that conducting environmental analysis "necessarily involves some degree of forecasting" and requires an agency to "use its best efforts to find out and disclose all that it reasonably can." 14 C.C.R. §15144; *Vineyard Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428. An agency "cannot

reach the question of what is reasonably foreseeable and what is speculative until that investigation has been completed." *Ass'n. for a Cleaner Env't. v. Yosemite Community College* (2007) 2007 WL 2687418; see also, *Muzzy Ranch v. Solano County Airport Land Use Comm'n.* (2005) 41 Cal.4th 372, 382-384. That investigation cannot be avoided merely because the impact is difficult to analyze or involves some uncertainty. See *Laurel Heights Improvement Ass'n. v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 399 ("The fact that precision may not be possible, however, does not mean that no analysis is required."); *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 158 ("The fact that the exact extent and location of such growth cannot now be determined does not excuse the County from complying with CEQA.").

5 Courts have repeatedly rejected agencies' conclusions that impacts are too speculative for analysis. For example, courts have rejected the argument that the preparation of an EIR for a rezoning is speculative. In *Carmel-by-the-Sea v. Monterey Cty.* (1986) 183 Cal.App.3d 229, 249-52, the County argued that no EIR was required for a rezoning decision by the County as environmental impacts would be too speculative and mitigation measures could not be given meaningful consideration. The County further argued that a later EIR at the development stage would adequately address environmental issues and would avoid "needless delay and redundancy." The court rejected this argument, stating that "[t]he fact that the environmental consequences of a rezoning may be more amorphous than those flowing from a precise development plan does not compel the conclusion that no EIR is required," and held that the County's adoption of the zoning ordinance without preparing an EIR violated CEQA. The court in this case relied on *Bozung v. Local Agency Formation Comm'n.*, (1975) 13 Cal.3d 263, 282, in which the California Supreme Court rejected the argument that preparing an EIR at the annexation approval stage is premature and wasteful. The court stated that such an argument "misses the entire thrust of CEQA.... It is desirable that the precise information concerning environmental consequences which an EIR affords be furnished and considered at the earliest possible stage." Similarly, ARB cannot wait for MPOs to analyze impacts later based on the claim that impacts are speculative; it must analyze the reasonable foreseeable impacts of adopting the Regional Targets now.

6 Courts have also found flaws in CEQA documents that fail to sufficiently analyze indirect effects. In *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 445-46, a non-profit organization challenged the City's approval of an amendment to its General Plan that would rezone a 25-acre parcel of undeveloped land consisting primarily of wetlands to allow commercial and controlled manufacturing uses. The EIR acknowledged that the project may pose a significant economic problem for existing businesses, but offered little analysis of the issue and claimed that economic effects of the project were beyond the scope of CEQA. Plaintiffs argued that the City failed to consider how these economic problems would translate into physical effects on the City's central business area. Citing CEQA Guidelines 15064(d) & (f), the Court concluded that economic problems caused by the proposed project could conceivably result in business closures and physical deterioration of the downtown area, and thus on remand, the City should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the project. Similarly, ARB must analyze the impacts of changed development patterns that will result from the adoption of the Targets.

7 Further, courts have indicated that the determination of whether an impact is speculative cannot be determined by a bright line rule. Rather, the determination depends on evidence available to the agency analyzing impacts. In *County Sanitation Dist. No.2 of Los Angeles v. Kern Cty.* (2005) 127 Cal.App.4th 1544, 1558, 1585-87, Kern County contended that potential adverse environmental impacts of its ordinance restricting application of sewage sludge on land were too remote and speculative to justify preparing an EIR. The County argued, *inter alia*, that it could only speculate regarding which alternative biosolids generators would adopt under the new ordinance. The court stated that "[d]etermining whether alternative methods of compliance with a new ordinance re reasonably foreseeable or speculative depends on the facts in the record rather than a bright line rule of law.... Consequently, regardless of whether the situation concerns a new rule, regulation or ordinance, whether one or more methods of future compliance are reasonably foreseeable depends on the quality and quantity of evidence in the administrative record." In this case, various entities affected by the ordinance submitted comments to the County, predicting how they would respond to the ordinance. The court concluded that commenters' predictions and information on which those predictions were based constituted substantial evidence concerning reasonably foreseeable alternatives. Here also, the discussion of potential impacts contained herein, in addition to the potential impacts raised by those who have commented on the draft GHG reduction targets, demonstrates that ARB has adequate information with which to analyze impacts.

Here, ARB did not conduct any investigation as to impacts and did not demonstrate that impacts are too uncertain. To the contrary, the FED acknowledges there may be a potential for significant adverse impacts on the environment (*see, e.g.*, FED at 1, 13). These impacts include potential impacts from air quality, traffic congestion, population growth, displacement of residents, utilities and services, noise, light and glare, and aesthetic/visual effects. FED at 14-15. The inadequacy of this impact analysis is discussed in further detail below.

8 Despite these acknowledged impacts, the FED fails to analyze those impacts, conclusorily claiming that "[s]peculation on the adverse impacts within each region...is not reasonable at this time." FED at 2. ARB continues to state throughout the FED without support that it cannot speculate as to the impacts of the Regional Targets at this time (FED at 1, 2, 7, 14, 15). The FED's repeated assertion that ARB lacks the type of information necessary to prepare a properly robust environmental analysis is belied by the mountain of data, analyses, charts, figures, and reports either posted on ARB's web site, referenced in the material posted on ARB's web site, or readily available to ARB. For example, several months ago, the four largest MPO's jointly submitted information to ARB showing in fine-grain detail the different types of housing units that would likely be developed throughout each region based on meeting different GHG-reduction targets. See Attachment A, Memorandum to ARB from the Executive Directors of the 4 Largest MPOs (File No. 8000130), May 18, 2010, p. 18. Individual MPO's submitted additional similar information. See Attachment B, MTC Alternative Scenario Data Request, Follow up Baseline Data Previously Provided. Readily available information from ABAG and MTC even projects the type and number of individual dwelling units for each city and county in the Bay Area. See Attachment C1 ABAG Housing Statistics, 2007; Attachment C2 ABAG Housing Statistics, 2009. This information demonstrates the massively different demographic,

transportation investment, development intensity and location, implications based on meeting different GHG-reduction targets.

9

Another specific example is that the FED fails to consider the impact of pushing growth into urban areas when there are known constraints on development. For example, in SACOG, the Sacramento Blue Print called for development in the Natomas basin due to its proximity to downtown. See Attachment D. However, it did not take into consideration that the basin is in a flood plain and building there is currently subject to a FEMA moratorium due to its failure to meet the 100-year floodplain requirements. This information is available and shows that it is reasonable foreseeable that by setting Regional Targets that directing more growth to this urban area will increase flood related impacts.

10

Rather than fulfilling its statutory obligation to analyze and discuss readily available information and its foreseeable environmental impacts, ARB has forced the public to comb through literally hundreds of documents and tens of thousands of pages of highly technical information to gain a basic understanding of the environmental implications associated with approval of the Project.

Although it purports to analyze "Project-Level Adverse Impacts," the FED devotes just *two pages* of discussion to such impacts. The discussion below demonstrates that it is in fact possible to identify potential impacts that can be anticipated as a result of setting the Regional Targets. This is particularly true given that ARB's adoption of the Targets will impose mandatory criteria that must be met by SCSs and APSs, without providing regional flexibility in achieving statewide goals for GHG reductions, making impacts from changed development patterns reasonably foreseeable. ARB is required to investigate potential impacts, and disclose, analyze and mitigate any foreseeable, significant impacts; ARB cannot hide behind a claim of "speculation."

C. Even When Considering ARB's History of Failing to Meet Requirements of Environmental Analysis Under Certified Regulatory Programs, the Record Demonstrates the Degree to Which The Regional Targets FED Fails to Provide the Required Analysis.

1. ARB Has a History of Avoiding Required Impact Analysis in FEDs.

11

ARB cannot avoid analyzing potentially significant adverse environmental impacts simply because this project is intended to create an environmental benefit. Under CEQA, *all* impacts must be analyzed regardless of the intent of the project. Challenges to air districts on other undertakings suggest that air districts in particular have a history of violating CEQA by avoiding environmental review of their projects they claim benefit the environment and are exempt from CEQA. While these cases involve the use of exemptions, they demonstrate a pattern by agencies, and air districts in particular, of avoiding review and disclosure of environmental impacts in cases where the agency believes the project will benefit the environment. They also demonstrate ARB's error in failing to analyze potentially significant environmental impacts associated with this project. Notably, many of the defects found in the

rules and regulations overturned in the cases discussed above are similar to the defects in ARB's FED.

For example, in *Dunn-Edwards Corp. v. Bay Area Air Quality Mgmt. Dist.* (1992) 9 Cal.App.4th 644, the Bay Area Air Quality Management District amended its regulations in order to reduce volatile organic compounds (VOCs) in paint and other architectural coatings. The air district claimed the reductions would have an environmental benefit and, therefore, the amendment did not require an environmental review under CEQA - the project was exempt according to the air district. The court disagreed and overturned the amendments for failure to comply with CEQA. The court found evidence in the record that the new regulations would require lower quality products that would increase net VOC emissions. In this case, the project was not exempt from environmental review because there was a reasonable possibility that the rule would have a significant effect on the environment. Here, ARB identifies potential impacts but claims they are too speculative to analyze. Like *Dunn-Edwards*, ARB provides absolutely no evidence to support this conclusion.

Similarly, in another air district case, *California Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, the court considered whether a rule adopted by the Mojave Desert Air Quality Management District ("MDAQMD") that allowed for road paving to offset air pollution from future projects was exempt from environmental review. MDAQMD believed the paving rule was not subject to CEQA's environmental review because the rule would reduce air pollution in the district. The court disagreed, holding that there was evidence in the record that air pollution may increase from road paving and that wildlife may be adversely impacted as well. Based on this evidence, the court held that the rule must undergo a full environmental review pursuant to CEQA. In so holding, the Court rejected MDAQMD's argument that the environmental impacts would be *de minimis* or too speculative to analyze, explaining the rule was intended to result in some paving and the environmental impacts from that paving needed to be disclosed. Here, ARB's adoption of the Regional Targets will impose mandatory transportation funding criteria for GHG reductions, which will result in changed development patterns and other foreseeable impacts. Thus, ARB must actually analyze the environmental impacts instead of deferring analysis by claiming they are too speculative like MDAQMD attempted to do in *California Unions*. *Id.* at 1245.

Likewise, in *International Longshoremen's & Warehousemen's Union v. Bd. of Supervisors* (1981) 116 Cal. App.3d 265, the board of supervisors, acting as the governing board of the county air pollution control district, amended certain rules to raise the allowable levels of nitrogen oxide (NOx) emissions for certain facilities in the county. In adopting the rule change, the board determined that its action was not subject to environmental review under CEQA because the action was taken for the protection of the environment and of natural resources. The Court of Appeal disagreed, holding that where there is a reasonable possibility that a project or activity may have a significant effect on the environment, the agency needed to conduct environmental review of the project. Notably, the court found that the Board provided no evidence that the rule would benefit the environment. Indeed, since there was a reasonable possibility that doubling the NOx emissions allowed into the air might have a significant effect on the environment, the court reversed the board's determination and ordered the board to

conduct further proceedings in conformity with the requirements of CEQA. *Id.* at 276-277. Similarly, ARB's FED simply ignores the environmental impacts associated with the project like increased urban density, increased sprawl in non-MPO or small MPO jurisdictions, and other impacts missing from the FED's review. The missing components of the FED's review are discussed more thoroughly below.

13 These air district cases, and CEQA more generally, require ARB to thoroughly analyze the environmental impacts from this project -- not ignore them under the guise that the project is environmentally beneficial and impacts are speculative. 14 C.C.R. §15063(b)(1) and *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580; *see also Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1197 ("[a]ny potential significant environmental effect triggers the EIR requirement (Pub. Res. Code §21080(c), (d)) even if the plan provides 'net' benefit for the environment."); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 27 127 Cal.App.4th 1544, 1558 (holding that "[t]he positive effects of a project do not absolve the public agency from the responsibility of preparing an EIR to analyze the potentially significant negative environmental effects of the project, because those negative effects might be reduced through the adoption of feasible alternatives or mitigation measures analyzed in the EIR."); *Building Code Action v. Energy Resources Conserv. & Dev. Comm'n.* (1980) 102 Cal.App.3d 577 (overturning negative declaration for new energy conservation standards for windows because resulting increase in glass production could have significant air quality impacts). As discussed further below, even if the Regional Targets would achieve benefits, these benefits would not excuse ARB from performing a meaningful analysis of potential adverse impacts.

2. In Some Instances ARB Has Conducted More Thorough Impact FED Analysis, Demonstrating the Degree to Which the Regional Target Fails to Provide Meaningful Analysis in this FED.

14 ARB has conducted a more thorough environmental analysis in FEDs prepared for other ARB recent undertakings also related to long-term regulation of GHG emissions. For example, in the Scoping Plan FED, ARB evaluated how each sectors' implementation of the Scoping Plan's recommended measures could impact resource areas identified in the CEQA Appendix G Checklist, and described the potential ways that individual projects could mitigate impacts. See Attachment E, ARB, California Environmental Quality Act Functional Equivalent Document, App. J to the Scoping Plan, Ch. IV (December 2008). The alternatives analysis for this document is also much more extensive than the Regional Targets FED; the Scoping Plan FED analyzes five alternatives that took very different approaches to meeting AB 32's goals: no project, adoption of a subset or different mix of implementation measures, and alternatives relying primarily on adoption of cap-and-trade system only, adoption of a carbon fee, or adoption of source-specific regulatory requirements. *Id.* at 74-90.

Similarly, the FED for the 33 Percent Renewable Electricity Standard, also a programmatic document, which numbers almost 500 pages, identifies seven areas of the state where renewable energy projects are likely to be built if the standard is imposed, reviews reasonably foreseeable impacts of those projects, and establishes meaningful and enforceable

mitigation measures such as lighting design, species protections and water quality measures. See Attachment F, ARB, Functional Equivalent Document Renewable Electricity Standard (June 2010).

In these instances, ARB did not attempt to simply say that impacts were speculative even though the programs similarly addressed long term GHG reductions. The same type of information was equally available in those instances and ARB did analyze the information. In these documents ARB at least undertook some effort to analyze, disclose and mitigate foreseeable impacts. The FED's two-page analysis is so lacking that it does not represent a good faith effort to analyze the impacts at all even though ARB had two years to meet the September 30, 2010 deadline.

D. The FED Violates CEQA's Requirements for a Stable, Accurate Project Description.

The FED fundamentally mischaracterizes the proposed Project by setting the Regional Targets at wholly unrealistic levels. They are inconsistent with the GHG reductions envisioned by the Scoping Plan, and do not reflect the careful, thoughtful, and supported analyses initially prepared by the MPOs as discussed in Section IV(B)(2) below. This results in a fundamental mischaracterization of the potential GHG benefits that will result from the Project. Because the Regional Targets are not realistically achievable, the asserted benefits will not be realized and there will be unintended environmental impacts that are not analyzed in the FED.

15 A stable project description is critical in order to intelligently evaluate a project's potential environmental impacts. *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730. As explained above, the FED must include all substantive components of an EIR. Thus, the FED must include a description of the proposed activity, and this project description must comply with the substantive requirements of CEQA. 14 C.C.R. §15252(a)(1). By setting forth unrealistic and unachievable Regional Targets, the FED fundamentally mischaracterizes the Project; because the Regional Targets cannot be achieved, the environmental analysis that flows from the Project description – cursory as it is – is wholly undermined.

The Regional Targets were developed on the fly only days before ARB released the FED. During the time the FED was prepared, the Regional Targets under consideration found to be achievable by the MPOs were much lower, as discussed below, and therefore would result in smaller environmental impacts, as admitted in the FED. FED at 20. The purpose of a stable project description is to review the complete project with the most significant environmental impacts. See *Desuk v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029. The ARB and MPOs did not move to more aggressive targets, which would have greater impacts, until after the FED was prepared as these more aggressive targets were only developed days before release of the FED. The FED could not have analyzed the actual extent of the Project because the more intensive project with higher Regional Targets was not the proposed Project when the FED was being prepared.

E. The FED Fails to Analyze the Reasonably Foreseeable Environmental Impacts of the Proposed GHG Regional Targets.

1. ARB Inappropriately Tiers Off Future Environmental Analysis of SCSs.

16 ARB inappropriately defers analysis of impacts to future environmental review to be conducted by MPOs, cities and counties. FED at 7, 8. A significant environmental impact is ripe for evaluation in a first-tier EIR when it is a reasonably foreseeable consequence of the action proposed for approval. *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1028. Future environmental review does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later environmental review document. *See Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 440 ("To the extent the FEIR attempted, in effect, to tier from a future environmental document, we reject its approach as legally improper under CEQA."). ARB's cursory analysis of impacts and deferral of any meaningful analysis to future environmental review to be conducted by MPOs, cities and counties is inadequate under CEQA.

17 As ARB itself recognizes, setting the Regional Targets too high will have the likely result of forcing MPOs to develop APSs, as they will be unable to develop SCSs – at least defensible SCSs – that truly achieve the Regional Targets. *See* FED at 20 (describing likely outcomes of selecting an alternative with Regional Targets set too high). MPOs have also indicated to ARB that unreasonably high targets will likely undercut SB 375's integrated planning intent by making development of SCSs difficult. *See* Attachment G, Letter from Hasan Ikhtrata, SCAG, to Mary Nichols, ARB, Aug. 4, 2010 (SCAG Aug. 4 letter). As the FED recognizes, this would result in consequences to SB 375's efforts to integrate land use planning and GHG reduction.

18 It should be noted that that the FED wrongly claims that APSs are apparently exempt from CEQA. FED at 20. This assertion appears to be based on SB 375's statement that: "For the purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), an alternative planning strategy shall not constitute a land use plan, policy, or regulation, and the inconsistency of a project with an alternative planning strategy shall not be a consideration in determining whether a project may have an environmental effect." Exemptions from CEQA must be express and not implied unless there is a clear legislative intent to the contrary. *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 201-203. The language of SB 375 mirrors the language in the Appendix G (IX)(b) CEQA Checklist under Land Use: "Does the project... Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?" SB 375 does not exempt an APS document but rather allows local agencies to approve projects without analyzing if a project is consistent with an APS or make a finding of overriding consideration for inconsistency with an APS. The regional transportation plan (RTP), SCS and APS all require compliance with CEQA. The FED's statement reflects the haste in which the FED was prepared, its inconsistency with CEQA, and

the confusion that surrounds preparation of the Regional Targets and FED. It also shows the lack of clear explanation provided to the public during this process.

As discussed in Section IV below, the evidence shows that ARB knowingly set very aggressive levels for the Regional Targets that the MPOs indicated are not achievable. A variety of consequences can be anticipated to result from setting the Regional Targets at unsupportable levels, as the FED itself acknowledges. FED at 13. As discussed further below, the FED's alternatives analysis affirms that setting the targets too high will result in environmental impacts that are not considered in the FED. The FED makes the unsupported decision that the proposed Regional Targets are just right and dismisses the acknowledged impacts as too speculative. ARB therefore undermines both the SB 375 framework and CEQA's intent to require consideration of the environmental impacts of agencies' actions.

2. The Regional Targets Will Have Significant Environmental Impacts Not Considered in the FED.

a. Targets That Are Set Unrealistically High Will Drive Development Out of MPO Jurisdictions and Into Non-MPO Areas of California or Outside the State.

Development in California – and throughout the world – is driven by immigration and birth rates, neither of which can be legally "stopped" by any democratic government entity. Regardless of where the Regional Targets are set, California is expected to continue to experience population growth, and these people must live somewhere. Developers will look for creative alternatives to provide this housing, even if it means looking outside of their traditional development zone, particularly given the predevelopment costs associated with small-scale infill development.

SB 375 does not apply to the 21 counties in California that are not included within MPO jurisdictions. These areas are not subject to the Regional Targets adopted by ARB, and will not experience the same development limitations as the MPO jurisdictions. If the Regional Targets are set at levels that preclude development sufficient to absorb California's housing needs, development will be driven out to these more rural, sparsely populated areas of the state.

In some cases, development will occur in non-MPO jurisdictions that are adjacent to areas that would be subject to Regional Targets. For example, SACOG's jurisdiction is located within commuting distance to non-MPO counties for jobs located in areas such as Roseville and Rancho Cordova. See Attachment H, City of Roseville, Office of Economic Development, Demographic, Development and Employment Profile 2007 at 16 ("Roseville is a net importer of labor and has been for the past several years as the number of jobs has surpassed the number of employable residents in the City"); see also Attachment I, City of Rancho Cordova, General Plan: Economic Development Element at 6 ("Rancho Cordova has a strong job market (approximately 3 jobs to every 1 household)"). By shifting development to these areas not within SACOG's jurisdiction, the Regional Targets could result in precisely the type of sprawl SB 375 was intended to discourage. In other cases, the Regional Targets could fundamentally shift development patterns outside of urban, developed areas to more rural, sparsely populated

parts of the state. Rather than eliminate environmental impacts associated with development, this would simply shift the location of certain impacts – such as GHG emissions – as well as create new impacts – such as agricultural conversion – in previously undeveloped, or sparsely-developed areas, and conflict with California's preservation priorities.

21

Similarly, because of the disparities between the Regional Targets set for the four largest MPOs and those recommended for the smaller ones, development will likely be driven away from the larger, more densely populated MPOs in favor of the smaller ones. This is particularly true for MPOs like Santa Barbara County Association of Governments (SBCAG) and Association of Monterey Bay Area Governments (AMBAG), which are currently allocated net increases in per capita GHG emissions by ARB. ARB has not appropriately analyzed the likelihood that the infeasible Regional Targets for the largest MPOs will accelerate growth within these smaller MPO areas.

And, development may even be driven outside the state. Some businesses and developers are already leaving California because of GHG regulations and increasing challenges related to development cost and delays caused by CEQA review. See, e.g., Attachment J, Varshney, S. and Tootelian, D., Cost of AB32 on California small businesses – summary report of findings (a report to California Small Business Roundtable) (June 2009). The Regional Targets will likely provide an additional push outside the state for many developers. Because California currently has extremely low per capita GHG emissions, and development in this state is subject to stringent environmental and efficiency standards, shifting development outside the state will result in greater net environmental impacts, particularly with respect to GHG emissions which is a global, not local, impact. See Attachment K, Per Capita Energy Statistics by Statemaster citing National Priority Project data (showing that California ranks 48th in the U.S. in per capita GHG emissions). This paradox is noted in a Harvard study:

22

The environmental movement includes both a push to limit development and a movement to make energy less harmful. Californians have embraced both elements of environmentalism. The sad impact of that, however, is that while California has become the least emissions intensive area of the country, that state has also reduced its growth. As a result, fewer new households are locating in that energy conserving state and more households are locating in places that are far less environmentally friendly.

Attachment L, The Greenness of Cities, E. Glaeser and M. Kahn, John F. Kennedy School of Government, Harvard University, March 2008, p. 6-7. Setting regional targets that exceed what can reasonably be achieved only exacerbates the movement of growth to areas outside California.

Such consequences are precisely the opposite of what was intended to result from implementation of SB 375. By setting the Regional Targets at overly aggressive levels, ARB will perversely create greater environmental impacts than might otherwise occur, as acknowledged in the FED. FED at 20. In addition to the environmental impacts that could result

from adopting unsupportable Regional Targets, these types of fundamental development changes could impact the quality of life in many rural, largely undeveloped areas.

b. Setting Regional Targets Too High will Likely Result in Loss of Federal Funding for Transportation Projects.

SB 375 ties the provision of federal funding to the Regional Targets by including the SCS as an element of an MPO's regional transportation plan (RTP). Govt. Code § 65080(b)(2). The federal Clean Air Act requires RTPs in areas either not in attainment, or that have recently achieved attainment, with national ambient air quality standards, to demonstrate the RTP conforms with (i.e., supports the purpose and goals of) the relevant state implementation plan (SIP). 42 U.S.C. §7506(c). In order to receive federal funding for transportation projects included in an RTP, the U.S. Environmental Protection Agency (EPA) must determine that the RTP conforms to the SIP for the relevant region. This process is known as a "conformity determination." Because SCSs that achieve the Regional Targets will now be included in RTPs, the assumptions that underlie SCSs will be considered in EPA's conformity determination. Govt. Code §65080(b)(2).

23 The conformity regulations require use of reasonable assumptions regarding the distribution of employment and residences in the area. 40 C.F.R. §93.122(b)(1)(iii)). The EPA has further specified that it and the U.S. Department of Transportation "believe that historical trends and recent data should be considered primary sources of information from which land use assumptions should be based and evaluated." See Attachment M, EPA Guidance: Improving Air Quality Through Land Use Activities (EPA Guidance) at 57. In addition, "land use, population, employment, and other network-based travel model assumptions must be based on the best available information." 40 C.F.R. §93.122(b)(1)(ii); see also EPA Guidance at 58. And, conformity determinations "must be based on the most recent planning assumptions in force at the time of the conformity determination." 40 C.F.R. §93.110(a). The EPA Guidance also explains that EPA expects land use assumptions used in a conformity determination "would be generally consistent with the trends assumed in the previous conformity determination or those included in a recently submitted SIP," and if the conformity documentation does not provide a "reasonable explanation" for deviating from these assumptions, "the conformity determination will be closely scrutinized, and may not be approved." EPA Guidance at 59.

Additionally, federal law requires RTPs to include a financial plan demonstrating how the adopted RTP can be implemented and to identify public and private sources that are "reasonably expected" to be available to carry out the RTP. 23 U.S.C. §§134(i)(2)(C), 134(j)(2)(B); see also 23 C.F.R. §450.104 (RTP must include "sufficient financial information for demonstrating that projects in the [RTP] can be implemented using committed, available or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.").

Two outcomes will likely result from unachievable Regional Targets. First, as explained further below, in order to justify the Target levels, ARB and the MPOs have adopted a variety of highly questionable assumptions regarding population concentrations, and pricing and land use strategies. The Regional Targets also reflect assumptions about the impact of the recession that

may not be justified. Because the RTPs undergoing a conformity determination will contain extremely different assumptions than have been previously employed, EPA will likely closely scrutinize the conformity documentation. Similarly, the major transit investments required to achieve the Regional Targets will require commitment of funds that MPOs are unlikely to be able to demonstrate satisfies federal constraint requirements.

Given the questionable assumptions reflected in the Regional Targets, and the evidence supporting much lower targets, it is likely that EPA would not approve a conformity determination, putting federal funding requested in the RTP in jeopardy. This will include jeopardizing funding for fixing existing health and safety problems, or completing long-planned transit and roadway improvements. And, the inability to make the requisite financial constraint demonstration will violate federal transportation law. This will not have the intended effect and will hinder the ability of California to reduce GHG emissions because it will drive federal transportation dollars to other states, thereby discouraging growth in our state, and investment in its clean energy grid.

Nor would the preparation of an APS, rather than an SCS, relieve an MPO of the threat of losing federal funding. Although, unlike SCSs, APSs are not part of the RTP, they still have implications for federal funding. *See* Govt. Code §65080(b)(2)(H). As an initial matter, any alternative development plan included in an APS must itself undergo a conformity determination. Govt. Code §65080(b)(2)(H)(4). Thus, an alternative development plan based on faulty assumptions could jeopardize federal funding. Moreover, an APS that is prepared to demonstrate the ability to achieve the proposed Regional Targets, as would be required by SB 375 (Govt. Code §56808(b)(2)(H)), would suffer from the same flawed assumptions of an SCS, described above. The APS would either not be based on the best available information and most recent planning assumptions that have to be used in the RTP or, if not used because presumably not supported, the APS information would be conflicting and undermine the analysis that was included in the RTP. Either way the APS would provide strong reasoning to reject the MPO's conformity determination.

Second, in order to develop SCSs that have any chance of satisfying the Regional Targets, MPOs will be forced to focus their spending nearly exclusively on infill-related transit projects. This will come at the expense of transportation projects outside the urban core. Projects such as investment in high occupancy toll (HOT) or high occupancy vehicle (HOV) lanes, and regional transit extensions will likely not be included in SCSs and, therefore, will not receive federal funding as part of the MPO's RTPs. Lack of funding for these types of projects could result in increased GHG emissions, relative to what would otherwise occur. And, as discussed above, even with respect to these projects, MPOs will be unlikely to make the requisite demonstration of financial constraint.

The FED does not consider any of the likely consequences to California's development patterns described above, and the associated environmental impacts of these changes. Given the significance of this potential impact, it is imperative that ARB further study the potential impact on the MPOs ability to receive federal funding.

c. Additional Environmental Impacts Not Considered in the FED.

24 Various other specific categories of environmental impacts that can be anticipated to result from the proposed Project are not addressed *at all* in the FED. For example, as a result of increased urban density, and increased sprawl in non-MPO or small MPO jurisdictions, impacts can also be expected to occur with respect to: agricultural resources, biological resources, and cultural resources by development shifting to less developed areas of California as described above, as well as hydrology/water quality from intensifying urban development in the state's most highly developed areas. Unless mitigation measures are established, such as standards requiring new communities to be sustainable and conservation-oriented, this shifting of development to previously undisturbed areas will have environmental impacts including fragmentation of habitat, disturbance of archeological and cultural resources, and conversion of agricultural lands. Impacts to agricultural lands, such as those in the Central Valley where prime agricultural land is within and adjacent to existing city boundaries, could also result from increasing the intensity of existing town centers which could allow water and air quality impacts from neighboring dense residential areas. The FED must provide some analysis, or explain why such analysis is not necessary, of the impacts the proposed Project will have on all of these environmental resources.

d. The FED Fails to Consider Additional Impacts Due to Conflicts with Existing Laws.

25 In many cases, the extreme densification required by the Regional Targets will actually create conflicts with existing state law mandates relating to the protection of these resources. CEQA requires consideration of impacts due to conflict with any applicable policies and regulations. CEQA Guidelines, Appendix G, IX(b). The FED fails to consider impacts from the Project's conflict with several existing state and regional laws, as follows.

(1) State and Local Air Quality Laws

26 ARB's Regional Targets will create conflicts with existing state air quality laws. Increased density of existing urban areas will require additional schools and childcare facilities to serve the increased population. However, siting new schools in extremely dense urban areas runs contrary to state air quality laws, which require separation of sensitive receptors such as schools from busy roadways and other mobile sources of hazardous emissions. California law is clear about separating schools from sources of hazardous emissions, particularly those from mobile sources such as heavy traffic areas, idling diesel vehicles, and freeways. *See* Pub. Res. Code §21151; Attachment N, South Coast Air Quality Management District, Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions (August 2002); Attachment O, ARB, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005); Attachment P, California Department of Education, School Site Selection and Approval Guide. The extreme density required by the Targets runs contrary to these air quality mandates because it requires more sensitive receptors to be located near increasingly congested roads in the urban core.

Additionally, ARB's Regional Targets will create a conflict with local air quality guidelines. As discussed below, the new air quality standards adopted by BAAQMD created stringent new local community risk and hazard thresholds that will likely result in a disinvestment in infill development within the Bay Area. Specifically, infill will require extensive environmental review where it would otherwise have been exempt. For example, the figure in Attachment Q shows that there are high levels of cancer risk in downtown Oakland. Attachment Q, BAAQMD Screening Tool: Cancer Risk. The existing conditions will result in the likelihood that projects proposed in these areas are likely to require EIRs under BAAQMD's new significance thresholds due to proximate sources of toxic air emissions. This disincentive conflicts with the development patterns Regional Targets. These two competing legal mandates raise substantial questions about the feasibility of complying with ARB's targets and BAAQMD's new significance thresholds.

(2) State Education Laws

27 In addition to state air quality laws, intense urban development could also run afoul of state safety and child welfare requirements for child care facilities and schools, simply because the extreme density required by the Regional Targets will not allow sufficient space for new schools to meet state requirements. For example, state regulations set minimum acreage requirements for school sites based on enrollment, including outdoor playgrounds and fields and building areas, and prohibit schools from being sited adjacent to certain existing uses such as railroad and power line easements, pipelines and storage tanks. 5 C.C.R. §14010. In addition, licensed day care facilities must provide at least 75 square feet of outdoor activity space (22 C.C.R. §101238.2(a)) and at least 35 square feet per child of indoor activity space (22 C.C.R. §101238.3(a)), and physically separated indoor and outdoor activity areas must be provided for school-aged children (22 C.C.R. §101538.2, 101538.3). These space requirements and siting restrictions mean that in areas with an extreme density of population, children may end up being bussed or driven to distant schools, contrary to the safety and welfare goals of California education laws, and contrary to SB 375's goal of promoting walking and bicycling instead of vehicle trips.

(3) State Cultural, Biological, and Agricultural Resources Laws

In addition, if development is forced to areas outside of MPOs, development in previously undisturbed areas could conflict with state laws protecting archaeological, Native American and other cultural and historic resources. California laws protect these cultural resources by requiring projects to either avoid these resource, incorporate the resource through parks or open space, or create permanent conservation easements. (See 14 C.C.R. §15126.4(b)(3); 14 C.C.R. §15064.5(e); Govt. Code §65352.3(b).)

28 The shifting of development to rural, less developed areas could also create conflicts with state laws that protect biological resources, such as the California Endangered Species Act which promotes biological diversity by establishing protections for the conservation and enhancement of specified species and their habitat. See Fish and Game Code §§2050 et seq.

Similarly, shifting development outside of MPOs would result in conversion of agricultural lands, in conflict with state mandates to protect agricultural resources. The Land Conservation Act, commonly known as the Williamson Act, was adopted by the Legislature to maintain the agricultural economy of the state, to assure sufficient food supplies, to discourage the premature and unnecessary conversion of agricultural lands, to discourage discontinuous urban development patterns, and to preserve the open space and aesthetic values of agricultural lands. Gov't. Code §§51200 et seq.; see also *Kelsey v. Colwell* (1973) 30 Cal. App. 3d 590, 594-95 (discussing the purpose of the Williamson Act set forth in Gov't. Code section 51220). As discussed elsewhere, ARB's Targets will push new development to areas not subject to SB 375 and the MPOs' forthcoming sustainable communities strategies. In turn, new development in relatively unpopulated, non-MPO areas of the state will subvert the intent of the Williamson Act, requiring the conversion of agricultural lands to residential, commercial and industrial uses. The State's open space will be reduced dramatically as a result, and the discontinuous urban development urban development will become more common. This result directly contradicts the purpose of the Williamson Act, yet is not considered by ARB's FED. Compare Govt. Code §15120.

(4) State Stormwater Laws

29 The dense development required to meet the Regional Targets will struggle to comply with new stormwater regulations, which increasingly encourage and require space-consuming, low-impact development treatment systems to protect water quality and watersheds and stream processes. For example, new development in the San Francisco Bay Area region is required to incorporate site design features that require space for vegetated, unpaved areas. Specifically, new projects must minimize impervious surfaces, protect natural drainages, direct runoff from roofs and sidewalks to vegetated areas, and establish minimum surface areas for biotreatment systems. See Attachment R, San Francisco Bay Regional Water Quality Control Board, Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074, §C.3.c (2009). Similarly, the State Water Board stormwater permitting scheme is aimed at maximizing natural runoff by requiring dischargers to use non-structural controls (e.g. good housekeeping practices and employee training) and structural controls (e.g. detention and infiltration basins, rain gardens) controls to replicate pre-project conditions for even large storm events. See Attachment S, State Water Resources Control Board, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, §XIII.A.3. The extreme density required by the Targets conflicts with these goals to manage stormwater by designing projects with enough space for vegetated and bioswale areas to allow natural runoff.

(5) State Social Equity Laws

30 As recognized in RTAC's report titled Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375 (September 2009) (RTAC Report), land use based GHG reduction strategies could have adverse impacts to social equity concerns, including displacement and gentrification, which the Regional Targets should avoid. See Attachment T, RTAC Report at 28. The RTAC's focus on social equity is consistent with

requirements in SB 375, which require SCSs to consider land use patterns to meet the housing needs of all economic segments of the population (Govt. Code §65080(b)(2)(B)) and specify that the feasibility of meeting ARB's targets depends on economic and social factors, as well as environmental goals (Govt. Code §65080.01). As explained above, the high density urban development required to meet the Regional Targets may have the unintentional consequence of displacing low-income, urban communities with higher-priced urban development. Thus, these social equity concerns may be yet another reason that the MPOs will be unable to design defensible SCSs. In addition, ARB is required to consider the economic and social considerations the feasibility of meeting the Targets. The economic impacts will be significant in that one MPO calculated that the pricing necessary to reach the Targets would impose 460% per year transportation cost increases. Such extreme cost increases have a disproportionate impact on lower income families. Attachment U, Memorandum to MTC from S. Heminger, May 17, 2010, at 2 (MTC May 17 Memo). Though the evidence is very clear in the information the MPOs submitted to ARB, the FED does not consider this impact in its analysis.

(6) State Urban Park Laws

31 The Quimby Act, Govt. Code §66477, provides that cities and counties may require the dedication of land or payment of in-lieu fees for neighborhood and community park facilities or community gardens as a condition of tentative map or parcel map approval. However, by necessitating extremely dense development, the Regional Targets will inhibit the ability of cities and counties to ensure that urban development is balanced with parklands and urban open space. This runs contrary to the Quimby Act, which gives cities and counties the ability to prioritize urban green spaces. Moreover, the Act requires that the dedicated land or funds have a reasonable relationship with the use of the parks or facilities by the future residents of the subdivision. Govt. Code §66477(a)(5). The Regional Targets will create a direct conflict with the Quimby Act's mandate that dedicated parkland or in-lieu fees create a benefit the residents of the subdivided area.

(7) State Power Line Setback Laws

32 By increasing urban density, the Targets will likely require additionally power lines, posing new or increased risks to the increasingly urbanized communities. Since the new Targets will increase density, and thereby require additional power, the FED must comply with state and local requirements and consider whether the targets and increased power transmission will pose health risks to impacted communities. According to research by the California Electric and Magnetic Fields Program, a project of the California Department of Health Services and the Public Health Institute (1999), electromagnetic fields (EMFs) drop to background levels at between 100 feet and 350 feet from the transmission line, depending on the size of the line. See Attachment V. This is consistent with setbacks required for safety reasons at schools throughout the state. See 5 C.C.R. §14010(c) (requiring setbacks between 100-350 feet depending on the voltage of the lines). Indeed, EMFs and the siting of power lines more generally continue to raise health concerns that complicate project approval processes.

(8) State Traffic Congestions Laws

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As part of a legislative effort to limit fragmented transportation planning and reduce traffic congestion, state law requires county transportation agencies are required to develop, adopt and update congestion management programs that establish level of service (LOS) standards applicable, at minimum, to all state highways and principal arterials in the county. Govt. Code §65089. The statute provides that LOS standards cannot be below LOS E or the existing conditions, with an exemption for only a very restricted definition of "infill opportunity zones." Govt. Code §65089(b). If LOS standards are not achieved, local jurisdictions are required to adopt and implement deficiency plans. Govt. Code §§65089(b), 65089.4. Transportation projects competing for federal dollars are also required to be consistent with the adopted congestion management program, and the congestion management program in turn must be consistent with the regional transportation plan. By requiring intense urban development in some areas, and encouraging sprawl in others, the Regional Targets will likely increase LOS impacts on regional highways and arterials, frustrate the successful implementation of congestion management programs and interrupt federal transportation funds.

(9) State Housing Laws

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The Regional Targets conflict with state housing law mandates. Under state law, each local jurisdiction is legally obligated to meet its fair share of regional housing needs. Govt. Code §§65584 et seq. The Regional Targets will force all growth to occur within dense urban areas, which will likely mean that all but the densest communities will not be able to achieve their allocated housing requirements. While SB 375 calls for Housing Elements to be reconciled with RTPs, by setting unrealistically high Regional Targets, ARB will force MPOs to violate state housing law – including SB 375's amendments to it – because the allocated housing needs will not be able to be satisfied if regions are to achieve their Regional Targets. In failing to achieve Department of Housing and Community Development (HCD) Regional Housing Needs Allocation Plan (RHNA Plan) allocations, local jurisdictions will be faced with invalidated general plans and disqualification from affordable housing funding opportunities. The potential impact on population growth is discussed further below.

3. The FED's Analysis of Environmental Impacts That It Claims to Consider Utterly Fails to Comply with CEQA's Mandates.

Putting aside the FED's failure to give any consideration to important, reasonably foreseeable impacts of the Regional Targets, the FED also fails to provide a legally adequate analysis of those impacts it did consider by deferring all meaningful analysis of the Project's potential environmental impacts.

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The FED suggests that, because the Regional Targets will result in an overall net benefit to the environment – *i.e.*, a reduction in GHG emissions – an abbreviated environmental analysis is acceptable. *See, e.g.*, FED at 1 ("Further, the overall effect of setting Regional Targets will be beneficial for the environment."), 24 ("While there is a potential for adverse impacts based on subsequent regional and local decisions, the net benefit to the environment from minimizing long-term transportation-related greenhouse gas emissions is potentially substantial."). However, as explained above, the FED fundamentally mischaracterizes the likely impact of the Regional Targets. Rather than achieving substantial reductions in GHG emissions, or other

environmental benefits associated with smart land use decisions, because the Regional Targets are set at unrealistically high levels, they will not achieve their intended benefits and will likely result in substantial unintended environmental impacts.

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Indeed, ARB acknowledges that there may be a potential for significant adverse impacts on the environment (*see, e.g.*, FED at 1), but conclusorily states that impacts are too speculative to consider at this time. *See, e.g.*, FED at 2. The FED identifies significant impacts but does not mitigate them, as required by CEQA, leaving them as significant unavoidable impacts. CEQA provides that agencies should not approve projects as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen the significant environmental effects of such projects. Pub. Res. Code §§ 21001, 21081. Accordingly, in approving the Regional Targets, ARB will need to make specific findings to support their overriding considerations as to why each significant impact is acceptable in approving the Regional Targets. Pub. Res. Code §21002; *City of Arcadia v. State Water Resources Control Bds* (2006) 135 Cal. App.4th 1392, 1426. As discussed below, ARB has not made any evaluation of impacts such that it can defensibly claim that it has made an analysis to support a statement of overriding consideration in adopting the Regional Targets because the FED fundamentally fails to consider the impacts of the Regional Targets.

a) The FED's Analysis of Potential "Beneficial Impacts" Overstates and Mischaracterizes the Likely Benefits from the Proposed Project.

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The FED mischaracterizes and overstates potential beneficial impacts of the Regional Targets. The FED asserts the proposed Project will result in various benefits with respect to: Increased Mobility (Reduce Commute Time and Increased Productivity); Economic Benefits; and Healthier, More Equitable and Sustainable Communities. FED at 11-13. These benefits are copied from the RTAC Report, indicating that ARB did not use its independent judgment in developing the FED and analyzing potential impacts. These are not, however, "environmental" benefits. The FED misleadingly suggests that the public and decision-makers should weigh these potential benefits against the potential negative environmental impacts of the Regional Targets.

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In addition, the FED's description of these alleged benefits is extremely vague, and the FED does not demonstrate how they will be achieved. Moreover, many of these claimed benefits are counter to the evidence. For example, with respect to increased mobility, if development is forced outside of MPOs as discussed above, the Regional Targets will actually result in more cars on the road, and increase commute times. And, if RTPs are forced to forego funding requests for transportation projects such as HOV/HOT lanes and train extensions, the Regional Targets will actually reduce transportation choices. Although the FED suggests the proposed Project will result in economic benefits such as taxpayer savings and lower transit costs, these benefits are not likely to be realized given the substantial taxpayer investments likely to be required to fund transit projects that would be required to achieve the Regional Targets.

The FED also claims the Regional Targets will promote more equitable communities. However, increasing the cost of driving, which will unquestionably be required within all MPOs'

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jurisdictions to come anywhere close to achieving the Regional Targets, hits economically distressed communities the most. Targets that are set unrealistically high could result in displacement of urban residents, and drive up prices of infill development because no other options exist. And, if the Regional Targets are implemented, California may not be able to sufficiently provide for affordable housing given the limitations on development ability that would result. Lower income residents may be forced into areas suffering from the greatest impacts resulting from increased urban density (e.g., air quality, noise, etc.). Many of these concerns were conveyed to ARB in a July 20, 2010 letter re: Social Equity in SB 375 Target Setting (July 20 Letter), Attachment W. The coalition of environmental justice advocates who submitted this letter appropriately suggested ARB conduct a social equity analysis on the Regional Targets to be included in the environmental review document. Attachment W, July 20 Letter at 2. Despite this request, and an indication that the information necessary to conduct this analysis is available, ARB has not conducted such an analysis. Thus the environmental justice impacts of the Project remain unexplored by ARB and must be studied.

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Even with respect to the asserted benefits that are environmental, the FED mischaracterizes the potential impacts the proposed Regional Targets will likely have. For example, the increased density that would result from attempting to implement the Regional Targets will result in serious air quality consequences associated with extremely dense development. And, despite the FED's claimed improvements to water supply and quality, placing all development in dense, urban areas limits the ability to conduct natural treatment (e.g., bioswales, vegetated buffers, etc.). The alleged benefits to "Conservation of Open Space, Farm Land and Forest Land" are also mischaracterized. Because the Regional Targets are set unrealistically high, development likely will be pushed out of urban areas, to smaller MPOs and non-MPO areas. This would result in conversion of farming and forest lands, rather than preservation of it. And, the type of extremely dense urban development that would be required under the proposed will not leave room for urban parks as described.

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Finally, as discussed above, even if the Regional Targets were likely to achieve the environmental benefits suggested by the FED, these benefits would not excuse ARB from performing a meaningful analysis of the potential adverse environmental impacts of the proposed Regional Targets. The FED fails to provide a meaningful analysis of the potential environmental impacts of the proposed Regional Targets, as discussed below.

b) The FED's "Analysis" of Adverse Impacts Unlawfully Defers Meaningful Analysis of All Project Impacts.

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As discussed above, even though it acknowledges significant environmental impacts, the FED fundamentally fails to comply with CEQA because it defers all substantive analysis of the potential environmental impacts of the proposed Regional Targets. Although it purports to analyze "Project-Level Adverse Impacts," the FED devotes less than *two pages* of discussion to such impacts, and suggests that any more detailed analysis is not possible at this point. Further, it appears that the environmental impacts are mostly taken from those identified in the RTAC Report (RTAC Report at 28-31), again indicating that ARB did not use its independent discretion in developing the FED and analyzing impacts.

43 Further, CEQA requires a holistic analysis that considers the potential environmental impacts of a project at the earliest possible stage. 14 C.C.R. §15004(b). It is precisely at this point that a meaningful analysis of the potential impacts of the Regional Targets should be conducted, when the combined result of all of the Regional Targets can be analyzed. Waiting to analyze potential impacts at the individual MPO level would result in a piecemeal analysis of only individual Regional Targets, rather than consideration of the Project as a whole, in violation of CEQA. *See Orinda Ass'n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171. As discussed above, despite the FED's oft-stated concerns about conducting speculative analysis, there is much more information available to be analyzed regarding the impacts of the Regional Targets. Again, since the Regional Targets are being adopted as mandates, without allowing any regional flexibility, making impacts from changed development patterns and other impacts reasonably foreseeable. This information can be applied to perform a substantive analysis of potential environmental impacts from the proposed Project. The following is an overview of the inadequacies in the FED's analysis.

(1) Air Quality

44 The FED acknowledges the proposed Regional Targets would likely result in placing sensitive receptors close to high traffic areas, with associated health hazards. FED at 14. However, the FED makes no attempt to analyze where or to what extent such impacts are likely to occur. For example, the FED does not discuss the diesel particulate matter (DPM) emissions likely to impact sensitive receptors as a result of placing them close to roads and transit hubs. In addition, the FED does not discuss the impacts of pollution on sensitive receptors associated with non-motor vehicle emissions likely to result from extremely concentrated urban development. Given the density that will be required to attempt to achieve the Regional Targets, residences will be forced to be sited closer to stationary sources of emissions. This can be seen, for example, in Attachment Q, which shows the existing cancer risk in downtown Oakland, precisely the type of dense, urban environment in which the Regional Targets encourage additional growth. *See Attachment Q, BAAQMD Screening Tool: Cancer Risks.*

45 The FED fails to consider air quality in densely populated areas and completely fails to consider and analyze the likely impacts that pushing development into the less populated areas of the state will have. These changed development patterns will mean increased impacts in areas that currently enjoy relatively good air quality. For urban areas, the impacts of dense development will be acute and will disproportionately affect lower income areas of the large MPOs, as discussed above. The environmental justice implications are dramatic and must be further studied by ARB.

(2) Traffic Congestion

46 Although the FED acknowledges that traffic congestion could result from the concentration of development likely to occur under the proposed Project, it makes no effort to analyze these potential impacts. FED at 14. Given the extreme density that would result from attempting to implement the Regional Targets, a detailed consideration of the congestion it will create – and the associated impacts this congestion will have on GHG emissions, air quality, noise and other impacts – is especially important. By pushing development into densely

populated areas, the Level of Service on local roadways will get much worse. Even if successful at keeping commuting distance shorter, which we disagree will be the outcome, the emissions caused by cars sitting in gridlocked urban streets will offset potential benefits of reduced commute lengths. In particular, if funding for transportation projects is jeopardized, as discussed above, the Regional Targets could result in a substantial increase in urban traffic and more GHG emissions from idling. The FED also fails to consider how traffic patterns will be affected throughout the state if development is pushed into other regions.

(3) Population Growth

47 Once again, although the FED recognizes that attempting to implement the Regional Targets will result in substantial growth in urban, infill areas, it makes no attempt to analyze these potential impacts within each MPO's jurisdiction. FED at 14. The FED must provide more detail about this potential growth, and describe the associated strains on resources it will create. In addition, the FED must consider the population growth that will occur in small MPOs and non-MPO areas as a result of setting unrealistically high Regional Targets. The FED must also consider whether the Regional Targets will preclude construction of housing sufficient to absorb anticipated population growth throughout the state.

48 Under state law, each local jurisdiction is legally obligated to meet its fair share of regional housing needs. Govt. Code §§ 65584 et seq. Existing and projected housing needs are determined by HCD. Govt. Code §§ 65584(a)(1), 65584.01. The regional share allocation must be based on population projections produced by the Department of Finance and regional population forecasts used in preparing RTPs. Govt. Code §65584.01(b). This determination by HCD must occur at least 2 years prior to the scheduled revision of a local jurisdiction's housing element. Govt. Code §65584(b). Then, the appropriate council of governments determines each city's and unincorporated area's fair share of that regional housing need in a RHNA Plan. Govt. Code §§65584(b), 65584.04. The RHNA Plan must be adopted at least one year prior to scheduled revision of the housing element. Govt. Code §65584(b). Each locality's share of regional housing need is distributed among four income categories to ensure planning for all income levels. Govt. Code §§65584(a)(1), (e).

SB 375 requires that allocations to local jurisdictions created by the RHNA Plan must be consistent with the development pattern included in an SCS, as included in the RTP. Govt. Code §65584.04(i). Thus, HCD must provide housing allocations to MPOs, which are then incorporated into a RHNA Plan, which in turn must be consistent with the SCS incorporated into the RTP. See Govt. Code §65584.04(i)(3).

49 As discussed herein, Regional Targets will force all growth to occur within dense urban areas, which will likely mean that all but the densest communities will not be able to achieve their allocated housing requirements. HCD has allocated housing, based on current population projections, to unincorporated areas throughout the state indicating that existing housing allocations rely on construction of residential projects outside existing urban centers. These regions will not be able to satisfy both housing allocations and Regional Targets concurrently. While SB 375 calls for Housing Elements to be reconciled with RTPs, by setting unrealistically high Regional Targets, ARB will force MPOs to violate state housing law – including SB 375's

amendments to it – because the allocated housing needs throughout the region will not be able to be satisfied if MPOs are to achieve their Regional Targets, which direct residential growth to only the densest, urban areas. In other words, achieving Regional Targets will occur at the expense of satisfying regional housing needs.

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In failing to achieve HCD RHNA Plan allocations, local jurisdictions will be faced with invalidated general plans and disqualification from affordable housing funding opportunities. Specifically, general plans must contain in a housing element an assessment of the jurisdiction's existing and projected housing needs. It also must contain an inventory of resources and constraints relevant to meeting those needs. Govt. Code §65583(a)(3). If the inventory does not demonstrate adequate site capacity to accommodate the city's regional housing need for all income groups, the element must contain actions that will be taken to address the shortfall. Govt. Code §65583(c)(1). The Regional Targets will render a local jurisdiction's ability to achieve, or to even create a plan to achieve, housing allocations infeasible, thereby invalidating the jurisdiction's general plan. Further, several affordable housing, community development and infrastructure funding programs include housing element compliance as a pre-requisite; inadequate housing elements will preclude such funding.

(4) Displacement of Residents

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While the FED notes that infill development demands resulting from the Regional Targets could result in displacement of existing residents, it makes no attempt to analyze these likely impacts. FED at 14. As discussed above, the proposed Project could have major environmental justice implications if existing housing stock is torn down in favor of newer, denser development, often in economically challenged areas. In addition, the proposed Project could make urban living unaffordable by eliminating non-urban core options. Ultimately, many people may be pushed outside of urban areas to small MPOs or non-MPO areas. Despite requests from the EJ community, ARB declined to conduct a social equity analysis as part of the environmental review process. These potential impacts must be analyzed in the FED.

(5) Utilities and Services

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The FED casually notes that new or modified utilities and services will be required to accommodate new growth in urban areas, but provides no detail about the type of expansions that will be required, and whether such utility and service additions are feasible. FED at 14. The FED needs to analyze the *major* demands that will be placed on existing utility service, and the need for substantial investment in additional utilities in already-developed and, therefore, spatially constrained areas. Throughout the state, infrastructure is already aging and funding for expanding capacity is limited. The tragic example of the explosion and fire in San Bruno is all too graphic evidence of the result of aging, overburdened infrastructure in densely populated areas. The FED must also consider how substantial increases in urban populations will impact the availability of public services, such as schools, libraries and parks. And, once again, the FED fails entirely to consider the impacts of setting unachievably high Regional Targets on small MPO and non-MPO areas; the increased development that will occur in these areas will bring associated demands for major new utilities and services in areas not currently able to accommodate this level of growth.

In addition, the impacts of constructing and operating these major utilities and services must be considered. For example, building the type of waste-water treatment facilities, schools and other services that would be required to accommodate the level of density required to comply with the Regional Targets would create substantial associated impacts, including to air quality, water quality, and noise.

(6) Noise

53 The FED again recognizes that increased growth in urban areas could result in increased noise pollution, but makes no effort to describe or quantify these potential impacts. FED at 15. Substantial concentrations of development in dense, urban areas could create major new sources of noise, affecting both existing and future residents. The FED needs to analyze the impact of placing sensitive receptors near noise sources – both existing sources and future sources that will result from attempting to implement the Regional Targets. And, development forced outside of the large MPO areas would create new sources of noise in currently quiet, rural areas.

(7) Light and Glare

54 Similarly, while the FED recognizes that the proposed Project would increase light pollution in areas surrounding new development, it includes no analysis of where such impacts would be likely to occur, or the likely extent of them. FED at 15. The FED must analyze new sources of light and glare, as well as the placement of sensitive receptors near existing sources. And again, development forced outside of the large MPO jurisdictions would create new sources of light and glare in sparsely developed areas.

(8) Aesthetic/Visual Effects

55 The FED refers to generalized aesthetic changes that could result from attempting to implement the proposed Regional Targets, but includes no details about where such impacts might occur, or how they will impact the visual character of communities throughout the state. FED at 15. The FED must analyze the likely impacts of greatly intensified density in urban areas. The proposed Project could significantly change the character of some urban areas characterized by single-family, low-density development. *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 936-939. For example, accommodating the necessary growth in the Bay Area to achieve MTC's Regional Targets (*i.e.*, approximately 40,000 to 200,000 people in San Francisco, 50,000 people in Oakland, and 55,000 to 60,000 people in San Jose) will require significant redevelopment of currently developed areas and, therefore, greatly change the visual character of these cities. See Attachment X, MTC Presentation July 9, 2010, Slide 19; Attachment Y, MTC Presentation July 28, 2010, Slide 11. The proposed Project is also likely to impact urban open space, as more and more urban area must get developed. And, the visual character of small MPO and non-MPO jurisdictions will likely change dramatically as a result of development that is pushed into these areas.

(9) Growth Inducing Impacts

CEQA requires analysis of whether a project will lead to economic or population growth or encourage development or other activities, including the construction of housing in the surrounding environment, which could affect the environment. Pub. Res. Code §2100(b)(5); 14 C.C.R. §15126.2(d). This discussion should include analysis of how a project can indirectly lead to development by overburdening existing community service facilities, which could in turn require construction of new facilities. 14 C.C.R. §15126.2(d). In particular, as recognized by the court in *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n.*, this analysis should consider how limiting development in one area can have consequences of displacing development to other areas. (2007) 41 Cal.App.4th 372, 383. Given the major development and population distribution consequences of the proposed Regional Targets, described throughout this letter, the FED's two-paragraph discussion of growth-inducing impacts is wholly inadequate.

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The FED asserts the proposed Project will not create growth-inducing impacts "because it will not influence the amount or rate of population growth in the State," and the Project "will have no effect on demographics, population growth rates, or external factors such as immigration policy that might influence the rate of growth in the State." FED at 15. Yet, by this logic, essentially no development projects would ever need to consider growth-inducing impacts, because few projects, by themselves, influence these types of factors. This argument is completely contrary to CEQA. Moreover, it is ironic that the FED makes this conclusion because, as it elsewhere states, the purpose of the Regional Targets is to influence demographics and shift growth patterns. *See* FED at 19-22.

The FED must consider how the proposed Regional Targets will impact growth patterns. Attempting to implement the Regional Targets will draw many more people to urban areas, where virtually all new development within MPO jurisdictions would be concentrated. And, the FED must also consider the population growth that will occur outside of the large MPO jurisdictions, which would result in the need for supporting infrastructure, and various associated impacts.

F. The FED's Inclusion of Possible Compliance Measures Defers Meaningful Analysis and Fails to Demonstrate that Mitigation will be Effective and Enforceable as Required under a Certified Regulatory Program.

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Documents prepared under certified regulatory programs must describe mitigation measures that could reduce the project's significant environmental impacts. Pub. Res. Code §21080.5(d)(3)(A); 14 C.C.R. §15252(a)(2). CEQA provides that "agencies should not approve projects if there are feasible alternatives or feasible mitigation measures available which would substantially lessen significant environmental effects of such projects..." Pub. Res. Code §21002; *see also* Pub. Res. Code §21081(a). The FED must therefore propose and describe mitigation measures to minimize the significant environmental effects caused by the Project.

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Rather than adopt measures to mitigate impacts, the FED includes a menu of "possible regional target compliance measures" that MPOs "may choose to employ." FED at 8-10. ARB improperly defers formulation of mitigation measures to MPOs, cities and counties. Similarly, The FED's discussion of these measures is unacceptably vague and mirrors its inadequate analysis of Project impacts. None of the significant impacts discussed above are mitigated

through clearly defined, implementable mitigation. Although ARB may not have jurisdiction to impose many of the necessary mitigation measures, it still has an obligation to analyze them. *See, e.g. Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 422 (court held that city could not defer mitigation of wetland impacts to Army Corps of Engineers as "[e]ach public agency is required to comply with CEQA and meet its responsibilities, including evaluating mitigation measures and project alternatives."); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341 (holding that lead agency could only disclaim responsibility for mitigation where the responsibility for implementation was exclusively under the jurisdiction of another agency). The MPO's RTP EIRs, attached to this letter, provide information related to mitigation measures used by MPOs in preparing RTPs provide the basis for developing specific mitigation measures. See Attachments Z.

59 For example, the FED should discuss how setbacks should be imposed to address air quality impacts likely to result from dense urban development. This analysis should consider the feasibility of including setbacks for sensitive receptors from roadways carrying a certain volume of traffic given the level of development anticipated to achieve the Regional Targets in areas where congestion will only be further exacerbated. As the agency regulating both air emissions and volume of traffic, mitigation measures such as this are clearly within the agency's authority to recommend. This is also true for noise and aesthetic impacts from transportation corridors and other impacts.

60 As another example, the FED should discuss how criteria should be established for the development of new town centers to address environmental impacts from shifting development to previously undisturbed areas. This analysis should include the feasibility of imposing criteria for new towns that would include a jobs/housing balance through the creation of significant employment opportunities along with a range of housing products including affordable housing; and conservation-oriented infrastructure systems such as reclaimed water and transit; integrated open space including preserves; and similar features such as those described in *Conservation Communities: Creating Value with Nature, Open Space, and Agriculture*, a recent publication from the Urban Land Institute.

61 Further, in adopting mitigation measures, lead agencies must have a reasonable basis to conclude that a mitigation measure will be effective with support in the record. *See San Franciscans for Reasonable Growth v. City & County of San Francisco* (1989) 209 Cal.App.3d 1502, 1522; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116 (rejecting proposed mitigation measures related to well use by neighboring landowners because the record lacked support for the agency's conclusions). The FED does not include any evidence to demonstrate that inclusion of the menu of "possible regional target compliance measures" will actually mitigate impacts. On the contrary, the FED has failed to identify and analyze several impacts and has similarly failed to adopt corresponding mitigation measures.

The FED does not commit any funding or resources to creating or enforcing a program for mitigating impacts. The FED should create a program, similar to a mitigation monitoring and reporting program that will ensure implementation of mitigation measures, as required by CEQA. Pub. Res. Code §21081.6; *see also Fed'n. of Hillside & Canyon Ass'ns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (an agency must take steps to ensure that mitigation

measures will be implemented). Instead, the FED defers the formulation and enforcement of mitigation measures to MPOs, cities and counties, and provides no funding or resources for such mitigation, and fails to demonstrate that impacts will actually be mitigated.

G. The FED's Vague and Cursory Alternatives Analysis is Inconsistent with the Purpose of CEQA and Fails to Identify Any Alternative that Reduces or Avoids Significant Environmental Impacts as Required Under a Certified Regulatory Program.

62 The FED must also include a meaningful alternatives analysis because certified regulatory programs remain subject to CEQA's substantive standards for the evaluation of alternatives. Pub. Res. Code §21080.5(d)(3); see *Friends of the Old Trees v. Dep't. of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1403-1405 (department abused discretion for not discussing project alternatives). CEQA requires a discussion of a reasonable range of alternatives that would feasibly obtain most of the basic objectives of the Project, but would avoid or substantially lessen its potentially significant environmental impacts in sufficient detail to allow evaluation, analysis, and comparison with the proposed project. 14 C.C.R. §15126.6. As the FED contains no mitigation for any impact, impacts remain significant; thus the FED must consider alternatives to avoid these significant impacts. *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal App.3d 433 (error for failing to consider alternatives when only means to avoid impacts).

The FED's analysis of alternatives to the proposed Project does not satisfy CEQA's requirements. The FED does not identify any alternative that reduces or avoids the significant environmental impacts that the project will cause – the fundamental purpose of an alternatives analysis under CEQA. Pub. Res. Code § 21002; 14 C.C.R. §15126.6(a). None of the alternatives is identified as reducing any significant impact and therefore the FED's alternatives analysis is pointless and fails to consider a reasonable range of alternatives. In addition, the FED fails to identify the environmentally superior alternative, as is required by CEQA, because no alternative was found to reduce any significant impact. 14 C.C.R. §15126.6(e)(2).

As described below, of those alternatives presented, the analysis is inadequate. The FED must analyze an alternative of setting realistic Regional Targets that are consistent with the Scoping Plan and the MPOs' demonstrations of achievable targets.

1. The FED's Analysis of Alternatives 2 and 3 is Vague and the Consideration of Each Shows ARB Failed to Meaningfully Consider Either Alternative.

63 According to the FED, Alternative 2 would "Increase Proposed Targets Substantially." FED at 20. The FED does not describe in "meaningful detail" what a "substantial increase" would involve, or how it would be divided amongst the MPOs; it merely notes three potential implications of such an alternative in extremely broad terms. This type of vague alternative and cursory analysis fails to provide decision makers with the information necessary to select between alternatives, and does not comply with CEQA. 14 C.C.R. §15126.6(d); *Laurel Heights, supra*, 47 Cal.3d at 406.

Alternative 2 essentially reflects the proposed Project. As detailed throughout this letter, the proposed Regional Targets are set unrealistically high and the proposed Project will result in precisely the type of negative consequences described in the FED for Alternative 2. The FED correctly recognizes that an important consequence of setting Regional Targets too high is that many MPOs will use an APS, rather than an SCS. FED at 20.

As ARB recognizes, setting the targets too high will likely backfire and result in status quo development. FED at 20. However, ARB's analysis of Alternative 2 fails to consider the important impact that will result from infeasible Regional Targets of pushing development outside of major MPO jurisdictions, and even outside of California, to less regulated areas. Regional Targets that are set too high will result in fundamental changes to development patterns, including substantial sprawl in currently sparsely-populated regions. The cursory discussion fails to give meaningful consideration to the environmental impacts of this alternative.

Just like the FED's discussion of Alternative 2, the half-page description of the generic implications of Alternative 3, which will "Decrease Proposed Targets Substantially" does not provide the public or decision-makers with meaningful information as required by CEQA. FED at 21. This alternative is also poorly defined – no definition is given for a "substantial decrease" – and the FED suggests a nonexistent draconian choice between the proposed Regional Targets and those that are so low that they result in no change in planning policy.

However, as well-articulated in Alternative 2, Regional Targets set at a level that can actually be achieved would enable MPOs to develop implementable SCSs, thereby ensuring comprehensive CEQA review and achieving SB 375's goals of integrating land use planning and GHG reductions. Thus, the consequences described (albeit vaguely) for Alternative 3 would not occur under an alternative that sets ambitious, but achievable Regional Targets, as envisioned by SB 375.

ARB's consideration of Alternatives 2 and 3 together shows that ARB actually failed to truly consider any alternative. ARB considered both Alternatives 2 and 3 to have more significant impacts than the proposed project. Like Goldilocks, ARB decided that Alternative 2 would be too high and Alternative 3 would be too low because the proposed Regional Targets are just right. Dismissing Alternatives 2 and 3 on the assumption that the proposed Project are "in theory" just right indicates the lack of real analysis done for the Project and for the alternatives because ARB is assuming the Regional Targets are feasible when in fact analysis from the MPOs indicate this is not true. As such, the record reflects that Alternative 2 - the alternative that would actually be achievable - would have less impact than the proposed Project.

2. Alternative 4 and 5 Do Not Represent Alternatives that Would Eliminate or Reduce the Project's Environmental Impacts.

Alternative 4 and Alternative 5 are not alternative Regional Targets. They are alternative methods of describing the same targets and as such are not actually alternatives, within the meaning of CEQA, that would reduce or eliminate the environmental impacts of the proposed Regional Targets. FED at 21-23. Rather, they simply represent mathematic means of achieving the same result. Because neither is actually an alternative, the FED fails to describe a

reasonable range of alternatives that actually reduce or eliminate any environmental impact. 14 C.C.R. §15126.6(a).

3. The FED Must Consider an Alternative of Targets That Are Consistent with the Scoping Plan and That Are Consistent With Targets That the MPOs Indicated Are Achievable.

67 An alternative that reflects assumptions about achievable reductions must be analyzed. For example, as discussed below, MTC's technical analysis demonstrates an aggressive, but realistic target would be a 5% reduction in 2020 and a 5% reduction in 2035 and the Southern California Association of Governments' (SCAG) analysis shows a 7 to 8% 2020 target and 5 to 6% 2035 target is appropriate. Regional Targets should also reflect the regional transportation-related GHG reductions envisioned under the Scoping Plan. As discussed above, the proposed Regional Targets – if they could be achieved – would result in *four times* the reductions envisioned by the Scoping Plan. The Targets should be adjusted to be consistent with ARB's previous determination of an appropriate and realistic goal for GHG reductions from land use.

Setting realistic, achievable targets would result in development occurring where and how it is intended to occur – within the large MPO jurisdictions, with a realistic focus on infill development. This would avoid or lessen the impacts ARB acknowledges will occur under both Alternatives 2 and 3. Moreover, because this alternative would not result in *all* development being concentrated in existing dense, urban areas, fewer of the environmental impacts described above would result, and fewer strains would be placed on urban infrastructure. This alternative would also help to ensure federal transportation funding, as EPA would be much more likely to accept the assumptions incorporated in a conformity analysis.

The FED must be revised to include a legally-sufficient analysis of alternatives, including an alternative that sets the Regional Targets at realistic, achievable levels consistent with the Scoping Plan's determination of the appropriate level of GHG reductions to be achieved from regional transportation-related measures.

H. ARB Has Violated Procedural Requirements and Has Not Allowed Sufficient Time for Review, Comment, Response to Comment and Recirculation.

1. ARB Has Allowed Insufficient Time for Review and Comment.

68 Documents prepared by a certified program must be available for review and comment by the public and other agencies. Pub. Res. Code §21080.5(d)(3)(B); *see Ultramar, Inc. v. South Coast Air Quality Mgmt. Dist.* (1993) 17 Cal.App.4th 689, 700 (air district's failure to make document regarding new rule available to the public for comment period required by CEQA was abuse of discretion). CEQA requires a 45-day review period for projects in which a state agency is lead agency and for projects that are of statewide, regional, or areawide significance. Pub. Res. Code §21091(a); 14 C.C.R. §15205(b). As ARB is a state agency and since the Regional Targets are of statewide significance, a 45-day review and comment period is required.

ARB has allowed an insufficient amount of time for review and comment. The FED was released on August 9, 2010. The FED states that "written and e-mail statements must be filed at least 10 days prior to the [September 23, 2010] meeting so that ARB staff and Board members have time to fully consider each comment." This means that comments must be submitted by September 13, 2010 in order to be "fully considered" by the ARB staff and Board, leaving only 35 days for review and comment. As the Regional Targets will result in lasting impacts on statewide land use planning and a myriad of other impacts, ARB has abused its discretion by providing the public less than the statutorily required time for public review.

2. ARB's Schedule Does Not Allow Time for Meaningful Response to Comments.

A certified regulatory program must consult with all agencies that have jurisdiction concerning the proposed activity (Pub. Res. Code §21080.5(d)(2)(C)) and its environmental documents must respond to concerns raised by such agencies. The agency's final action must contain its written responses to significant environmental points raised during the evaluation process. Pub. Res. Code §21080.5(d)(2)(D). ARB's regulations specify further that prior to taking action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each significant environmental issue raised during the public comment period. 17 C.C.R. §60007(a).

69 ARB's schedule for responding to comments indicates that it will be very difficult for the agency to conduct a meaningful review of public comments and even more unlikely that ARB will be able to prepare adequate responses to public comments. As mentioned above, the FED states that comments should be submitted 10 days before ARB's September 23, 2010 meeting. The FED also states in underlined text that comments must be received "no later than 5:00 P.M., September 22, 2010." ARB is scheduled to consider the Regional Targets at its September 23, 2010 meeting and is required, by statute, to adopt targets by September 30, 2010. Gov't Code §65080(b)(2)(A). This allows ARB little more than a week's time to review, consider and respond to all public and agency comments. This extremely compacted timeline indicates that it will be difficult for ARB to review the comments in a meaningful manner, and all but impossible for ARB to respond to such comments as required by CEQA and its own regulations. This is especially true in light of the number of comments anticipated to be submitted regarding the Regional Targets and the FED. As of [date], xxx comments on the Regional Targets and xxxx comments on the FED had already been posted to ARB's website. It is anticipated that many more comments will be posted before the close of the comment period. Accordingly, ARB has abused its discretion in failing to provide an adequate time to review and respond to comments.¹

¹ Statutory deadlines do not relieve an agency from complying with CEQA. For example, under Permit Streamlining Act, Gov't Code § 65920 *et seq.*, local agencies must comply with statutory deadlines for processing and reviewing development permit applications. If the local agency does not comply, the project may be deemed "approved" as long as public notice was provided to the public. Gov't Code § 65956(b). The automatic "approval" under the Permit Streamlining Act does not apply to compliance with environmental review under CEQA, however. See *Land Waste Mgmt. v. Board of Supervisors* (1990) 222 CA3d 950, 961-62 (holding that the Permit Streamlining Act does not require approval of an EIR). In other words, the independent statutory deadlines under the Permit Streamlining Act do not trump CEQA's substantive requirements. More generally, independent statutory deadlines

3. ARB Has Not Allowed Time for Recirculation of a Revised FED with More Feasible Regional Targets and Actual Analysis of the Reasonably Foreseeable Environmental Impacts.

70 Based on the analysis contained herein and the numerous comments submitted by others, ARB will need to revise the FED to address its many inadequacies. Notably, ARB must modify the Regional Targets to a more feasible level and provide a stable project description that can be adequately analyzed. Once the project description is stable, ARB can actually consider the foreseeable environmental impacts that could result from the targets as suggested in this letter and as evidenced through the information contained in the EIRs prepared for the RTPs. The revised FED will be required to be recirculated for additional public review and comment. 14 C.C.R. §15088.5; see *Joy Road Area Forest & Watershed Assn. v. California Department of Forestry and Fire Protection* (2006) 142 Cal.App. 4th 519, 533-535. ARB's statutory deadline of September 30, 2010 cannot be met if this is to occur. Recirculation is legally necessary under CEQA because the FED is fundamentally insufficient. *Mountain Lion Coalition v. Fish & Game Comm'n.* (1989) 214 Cal.App.3d 1043, 1050-1052.

I. As a Procedurally Flawed Document, the FED Will be Subject to Legal Challenge Under a De Novo Standard of Review and Could Result in Decertification of ARB's Certified Regulatory Program.

71 In failing to proceed according to CEQA, ARB's decision to approve the Regional Targets is subject to legal challenge. Pub. Res. Code §21080.5(g). While courts accord great deference to an agency's substantive and factual conclusions, whether an agency has complied with applicable procedural requirements is reviewed under the de novo standard. See e.g. *Communities for a Better Env't. v. City of Richmond* (2010) 184 Cal.App.4th 70, 83 (concluding that the claimed deficiencies in the EIR were procedural issues and were therefore subject to de novo review). Accordingly, ARB's failure to proceed according to CEQA, including the FED's failure to include a stable project description, to only conduct a cursory and conclusory analysis, and not provide adequate time for review will be subject to the de novo standard and will not be afforded deference. As the document is procedurally flawed, the court's review of the document will be subject to a lower standard of review.

The FED's failures could also risk de-certification of ARB's certified regulatory program. The Secretary of the Natural Resources Agency must withdraw certification from a program if it no longer meets the criteria for certification. Pub. Res. Code §21085.5(e). The certification criteria requires that documents prepared under the regulatory program do the following: (1) include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity; (2) are available for a reasonable time for review and comment by other public agencies and the general public. Pub. Res. Code §21085.5(d)(3). The FED fails to meet the criteria and ARB risks de-certification.

do not exempt agencies from CEQA's mandates. See *Natural Res. Defense Council v. Arcata Nat. Corp.* (1976) 59 Cal.App. 3d 959, 971-73. Here, ARB's September 30th deadline does not relieve ARB from complying with CEQA's requirement that ARB conduct a thorough environmental review of the Project.

J. ARB's Regulatory Program Exemption to Regulate Ambient Air Quality Does Not Extend to the Regulation of GHG Emissions.

ARB has exceeded its authority in preparing the FED for the reduction of GHG emissions, as such activity is outside ARB's certified regulatory program exemption. The fact that some agency activities come under a certified regulatory program does not exempt the agency from the requirement that an EIR or a negative declaration be prepared for other activities outside the scope of the certified program. *See Californians for Alternatives to Toxics v. Dep't. of Food & Agric.* (2005) 136 Cal.App.4th 1, 16 (pesticide regulation program does not cover disease control program).

ARB's certified regulatory program allows functionally equivalent documents for "that portion of the regulatory program of the Air Resources Board which involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans to be used in the regulatory program for the protection and enhancement of ambient air quality in California." 40 C.C.R. §15251. The fact that the exemption explicitly states that it only applies to a "portion" of ARB's regulatory program illustrates that the exemption is intended to be narrowly construed. *See Mountain Lion Found. v. Fish & Game Comm'n.* (1997) 16 Cal.4th 105, 130 (referring to ARB's exemption as one that is "narrowly defined and restrictive in scope.").

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ARB's regulation of GHG emissions does not fall within the scope of ARB's exemption for the protection and enhancement of "ambient air quality." Under State law, ARB's air pollution control programs are required to meet state ambient air quality standards and attain ozone, carbon monoxide, sulfur dioxide, nitrogen dioxide and particulate matter standards. 1988 Cal. Stats., ch. 1568, §1; Health & Safety Code §40911(a); *see* 2003 Cal. Stats., ch. 738. These standards form the basis of ARB's air quality planning and associated regulatory programs. Notably, ARB's air quality standards regulatory program does not extend to the regulation of GHG emissions (defined as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, nitrogen trifluoride). Health & Safety Code §38505(g). Thus, while the certified regulatory program may allow a "functional equivalent" document for regulatory actions related to air quality pollutants regulated by ARB's ambient air quality standards, it does not extend to regulation of GHG emissions. The FED, therefore, falls outside the scope of ARB's certified regulatory program exemption.

Since the Legislature has specified exemptions for certified regulatory programs, other exemptions may not be implied. *City of Coronado v. California Coastal Zone Conservation Comm'n.* (1977) 69 Cal.App.3d 570, 581. Here, ARB's regulatory program has never been approved to allow functionally equivalent documents for the regulation of GHG emissions. While ARB may be moving towards regulating GHG as part of its ambient air quality program, it was not part of the program when the certified regulatory program was approved. Accordingly, since the Legislature has specified an exemption for ARB's regulation of ambient air quality, an exemption to regulate GHG emissions cannot be implied. ARB must prepare an EIR and otherwise comply with CEQA's environmental review requirements.

IV. ARB Has Violated the California Administrative Procedure Act.

ARB's proposed Targets are politically-driven, arbitrary goals that lack any credible evidentiary support. In fact, the largest MPO in the state, the SCAG, recently voted to outright reject ARB's Targets for the region, based on SCAG's careful modeling and analysis of what is reasonably achievable for the region. See Attachment AA, September 2, 2010 SCAG Regional Council Meeting. ARB's proposal to adopt these arbitrarily high Targets violates the California Administrative Procedure Act (APA) because the Targets lack any evidentiary support, and because the Targets are significant mandatory transportation funding criteria that should be adopted as regulations, not as "guidance" thereby avoiding meaningful public participation in the rulemaking process as required by the APA. Govt. Code §§ 11340 et. seq.

A. In Failing to Follow Rulemaking Procedures in Adopting Regional Targets, the Targets will be Invalid for Failure to Comply with the APA.

73 ARB has committed procedural errors as it appears that ARB will adopt the Regional Targets as guidance rather than as regulations. The APA applies to the exercise of quasi-legislative power and to the adoption of regulations. Govt. Code §§11346, 11340.5. In taking such actions, the APA requires agencies to meet the basic minimum procedural requirements set forth in Govt. Code §§11346-11347.3. The APA was designed in part to prevent the use by administrative agencies of "underground" regulations. *California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 506. The APA defines regulations very broadly to include "every rule, regulation, order or standard of general applicationadopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." Govt. Code §11342.600.

The Regional Targets are clearly standards of general application as they will mandate GHG reductions throughout the State. Further, the Regional Targets implement SB 375, a law that is administered by ARB in the adoption of the Scoping Plan, the adoption of targets for GHG reductions, and the review of future SCSs. Accordingly, the Regional Targets should be adopted as regulations. However, ARB has not given any indication that it intends to adopt the Regional Targets pursuant to necessary procedures. For example, ARB has not provided notice of rulemaking in accordance with the APA requirements set forth in Govt. Code §11346.5(a). As such, ARB's adoption of the Regional Targets will be invalid for failure to comply with the provisions of the APA. Govt. Code §11350(a).

B. ARB's Selection of the Regional Targets is Arbitrary and Capricious and Lacking in Evidentiary Support.

74 ARB's selection of the Regional Targets is arbitrary and capricious and lacking in evidentiary support. *Western Oil & Gas Ass'n. v. Air Resources Bd.* (1984) 37 Cal.3d at 509. Courts have invalidated regulations when an agency fails to provide support for the regulation adopted. In *California Hotel & Motel Ass'n. v. Industrial Welfare Comm'n.* (1979) 25 Cal.3d 200, 212-213, the court considered an agency's order fixing wages, hours and conditions in the public housekeeping industry. The court clarified that in reviewing the validity of an administrative regulation, "a court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice

made, and the purposes of the enabling statute." The court held that the statement of basis, a statement required by the Labor Code to "reflect the factual, legal, and policy foundations for the action taken" issued by the commission simply recited the statutory authority for the commission's action, and included none of the facts or policy choices that supported the order. The court held that the statement of basis was inadequate, and invalidated the order. Similarly, in *Shapell Industries, Inc. v. Governing Bd.* (1991) 1 Cal.App.4th 218, 237, the court invalidated a school facilities fee that a school board imposed on a developer. The court held that the imposition of fees, through a resolution, was a quasi-legislative act that was reviewed for whether it was arbitrary, capricious or completely lacking in evidentiary support. *Id.* at 230. The supporting documentation for the fee resolution did not attempt to determine what percentage of the increase in student population was attributable to new development, and what proportion should be allocated to the developer, resulting in imposition of a fee that was insupportable. Similarly, ARB has acted arbitrarily in selecting the Regional Targets without providing evidentiary support, as discussed below.

1. The Regional Targets Should Be Set at a Level Consistent with What the Scoping Plan Determined Is a Realistic Goal for Regional Transportation-Related GHG Reductions.

As ARB is well aware, the *Climate Change Scoping Plan: A Framework for Change* (Scoping Plan) represents the State's plan for achieving the GHG reductions required by AB 32. Attachment BB. The Scoping Plan sets forth a variety of measures, intended to target all emission-producing sectors within California that will, collectively, achieve these GHG emission reductions. With respect to GHG reductions associated with land use patterns, the Scoping Plan recognizes the final SB 375 reductions will be determined through the SB 375 process; however, it estimates five million metric tons of CO₂ equivalent (MMTCO₂E) as the recommendation for regional transportation-related GHG reductions. Scoping Plan at 51. This reflects the reduction from business as usual (BAU) 2020 projections, not from the 2005 base year, as is reflected in the Regional Targets. Compare Scoping Plan at 11-14 (describing use of BAU metric) with Attachment CC, ARB, Staff Report: Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375, Aug. 9, 2010 (Staff Report) at 8 (explaining Regional Targets are set relative to 2005 base year).

In addition, the Scoping Plan recognized that its 5 MMTCO₂EE target reflects a recognition that absolute GHG emissions from passenger vehicles will increase from current levels. Specifically, the Scoping Plan and related documents state that ARB's BAU projection for land use and transportation was based on an assumed annual vehicle miles traveled growth in aggregate of 2.2% per year, and an assumed annual population growth of 1.2% per year. See Attachment BB, Climate Change Proposed Scoping Plan Appendices, page H-7; Attachment DD, Comments on the ARB's Updated Economic Impacts Analysis, page 5-6; Attachment BB, Scoping Plan at 50-51. Notwithstanding these stated assumptions (which would necessary result in an exponential increase in per capita emissions assuming static fleet efficiency and fuel standards), the Scoping Plan also includes a graph depicting a BAU projection which is wholly unrelated to the Scoping Plan's stated assumptions – Figure 4 at 50. The graph shown on the Scoping Plan's Figure 4 does not depict an exponential equation, but instead reflects two

seemingly randomly-chosen, connected straight lines to depict the BAU projection from 2010 to 2030 and from 2030 to 2050.

No matter which 2020 BAU projection is used (i.e., one based on the Scoping Plan's stated assumptions, which indicates exponential growth, or the other based upon the seeming random equation depicted in the Scoping Plan's Figure 4), the Scoping Plan, taking into account the 5 MMTCO₂E placeholder target, aims for a moderate reduction from a 2020 BAU, but also assumes that there will be an absolute growth in GHG emissions between 2005 and 2020. The Regional Targets would instead *reduce* absolute GHG emissions between 2005 and 2020 by three MMTCO₂E, notwithstanding the need to accommodate ongoing population growth. Accordingly, while ARB estimates that the Regional Targets will result in a three MMTCO₂E GHG reduction by 2020 (FED at 6; *see also* Attachment EE, Proposed SB 375 Greenhouse Gas Targets: Documentation of the Resulting Emission Reductions Based on MPO Data), and the Scoping Plan envisions a five MMTCO₂E GHG reduction from some BAU projection (Attachment BB, Scoping Plan at 51), the Regional Targets' reductions in fact call for far more dramatic reductions than envisioned by the Scoping Plan. The lower figure reflected in the Regional Targets' projections is the result of measuring against a 2005 baseline, rather than the 2020 BAU projection reflected in the Scoping Plan.

The Scoping Plan's target of regional transportation-related GHG reductions was based upon a U.C. Berkeley study that considered GHG reductions achievable from a combination of land use and enhanced transit policies, and reflects a 4% per capita vehicle miles traveled (VMT) reduction over a 10-year period. See Attachment BB, Scoping Plan at 50. In contrast to the Scoping Plan's estimates, achieving even just a 6% reduction in per capita GHG by 2020, which is lower than the overall Regional Targets, would result in a cumulative reduction of approximately 20 MMTCO₂E relative to the 2020 BAU projection (relative to the Scoping Plan's stated assumption, not the Scoping Plan's unsupported Figure 4 BAU projection). See Attachment FF, July 16, 2010 Memorandum from Andy Henderson, BIA of Southern California, Inc., to Terry Roberts, ARB.² This is *four times* higher than the reduction envisioned by the Scoping Plan and included in the Scoping Plan's accompanying economic analysis. Even if one were to compare the Regional Targets to a 5 MMTCO₂E reduction from the 2020 BAU projection shown on the Scoping Plan's Figure 4 (without support), the Regional Targets still exceed the Scoping Plan placeholders target by a factor greater than three in terms of MMTCO₂E reductions achieved in 2020.

Like the Scoping Plan's other emission-reduction measures, the five MMTCO₂E recommended action reflects the balance ARB previously struck between recognizing the difficulties of regulating land use, which is governed at the local level, while still calling for meaningful GHG reductions to be achieved as a result of changes in land use patterns. See Attachment BB, Scoping Plan at 26-27. Unfortunately, the Regional Targets represent a retreat from this balance, and instead are based upon purely aspirational goals, and is arbitrary and

² As explained in the attached memorandum, this analysis is based upon the five scenarios analyzed by the Southern California Association of Governments (SCAG). The per capita VMT reductions, and associated GHG reductions, considered by SCAG were extrapolated to a state-wide level to determine the likely effect of the type of Regional Targets being considered by ARB.

capricious. Moreover, despite grossly exceeding the reduction called for in the Scoping Plan, ARB falsely implies that the Regional Targets are necessary to meet AB 32 goals: "When these reductions are applied to the most recent statewide 2020 emissions forecast, the emissions target for passenger vehicles in California's 2008 Climate Change Scoping Plan is met." Attachment CC, Staff Report at 22 (emphasis added). This is highly misleading given that the Regional Targets exceed what the Scoping Plan envisions by at least several times over.

ARB should revise the Regional Targets to be consistent with the analysis the agency previously employed in the Scoping Plan. Such an approach would result in an accurate project description that permits a meaningful analysis of potential project impacts.

2. The Regional Targets Should Be Consistent with What MPOs Determined Was Feasible.

As mandated by SB 375, in developing the Regional Targets, ARB sought technical input from each of California's MPOs. The MPOs were asked to develop various GHG emission reduction scenarios. Most MPOs, in turn, provided scenario analyses representing various levels of GHG emission reduction aggressiveness and achievability. Many MPOs also provided follow-up analysis, including in response to additional questions asked by ARB.

As a threshold matter, given the short timeframe during which MPOs were providing information to ARB, and that ARB was developing its proposed Regional Targets and the FED, it is impossible that ARB had time to sufficiently analyze and consider the substantial information provided by the MPOs and consider the associated environmental impacts. For example, the Sacramento Area Council of Governments (SACOG) did not even recommend adoption of Regional Targets prior to release of the FED. Attachment CC, Staff Report at 27. And, as discussed in more detail below, within days of ARB making its recommendations on Regional Targets, one MPO, the Metropolitan Transportation Commission (MTC), submitted evidence that substantially undermines the proposed Regional Targets.

Although ARB purports to have relied upon these analyses in setting the Regional Targets (*see, e.g.*, Attachment CC, Staff Report at 23), rather than taking the time to truly understand the initial information submitted by the MPOs, it appears ARB cherry picked from the information provided, and some MPOs reverse engineered numbers to satisfy the desired outcomes. Using the MTC and the SCAG) as examples, the discussion that follows demonstrates the Regional Targets are not realistic and were not under consideration when the FED was prepared.

Although MTC and SCAG are described in more detail below, the Regional Targets developed for other MPOs suffer from similar analytical flaws. Moreover, the Targets are not consistent with what any of the MPOs considered feasible and are grossly inconsistent with what was considered in the latest Regional Transportation Plans and the EIRs prepared for adoption of those plans. This information is attached; ARB must analyze how these Targets will affect each MPOs RTP and the environmental impacts considered in adopting the RTPs. Attachments Z. The change from the current RTPs to the RTPs that will be required to actually meet the

Regional Targets provide the basis of the environmental impacts that a properly prepared FED should analyze.

a) The Regional Targets for MTC Are Not Supported by MTC's Analysis.

ARB proposes Regional Targets for MTC of 7% in 2020 and 15% in 2035. The analysis submitted by MTC demonstrates these Regional Targets are wholly unrealistic and were not what was considered by the MPO or ARB during the time in which ARB was preparing the FED. MTC provided ARB with a memorandum, dated May 17, 2010 (MTC May 17 Memo) that set forth eight different scenarios for land use patterns within the Bay Area. See Attachment U. These scenarios incorporated varying assumptions regarding the degree of emphasis on building new infrastructure versus maintaining existing facilities, and incorporating various pricing and land use planning strategies. MTC's analysis demonstrates that a 5% 2020 reduction in per capita GHG emissions and a 3% 2035 reduction are the most achievable targets, based on realistic land use and pricing assumptions; nevertheless, based upon this analysis, MTC determined it could achieve a 5% per capita GHG reduction by 2020 and a 5% reduction by 2035. Attachment U, MTC May 17 Memo at 3.

In considering scenarios resulting in higher per capita GHG reductions, MTC recognized that implementing the necessary pricing and land use assumptions to achieve reductions in line with the proposed Regional Target would not be realistic "by any stretch of the imagination." Attachment U, MTC May 17 Memo at 2; *see also* Attachment HH, Transportation 2035 Plan Final Environmental Impact Report, Findings and Facts in Support of Findings at A-68; A-74 to A-75 (describing infeasibility of implementing RTP with aggressive pricing or land use assumptions included). For example, the information provided by MTC shows that the Most Aggressive Scenario assumes an astronomical 460% increase in auto costs per mile. Attachment U, MTC May 17 Memo at 2. Not only is imposing such aggressive measures wholly unrealistic, but MTC also lacks the legislative authority to implement the pricing structures necessary to achieve reductions. Gov't. Code §§ 66500 - 66536.2; Attachment II, MTC Presentation dated August 13, 2010 at 14.

Further, only a portion of MTC's funds are available to be used for the new infrastructure necessary to support the new land use models. MTC's budget for new projects is severely constrained as a majority of the budget is reserved by law for certain types of infrastructure or has already been allocated by MTC to identified projects. The MTC Transportation 2035 Plan for the San Francisco Bay Area (T-2035 Plan), adopted on April 22, 2009, Attachment JJ, includes a \$218 billion budget that was developed to determine the revenue anticipated to be available during the T-2035 Plan period. The T-2035 Plan budget dedicates approximately \$177 billion (81% of total funds) to maintenance and operation/efficiency and approximately \$41 billion (18% of total funds) to expansion of transit systems, highways, and local roads. With respect to construction of new infrastructure, \$30 billion (14% of total funds) dedicated to expansion will be spent on transit projects, and \$7 billion (3% of total funds) will be used for road projects. T-2035 Plan at 35-37. Further, the total T-2035 Plan budget dedicates \$186 billion (85%) to "Committed Funds," which are funds that have been reserved by law for specific uses or allocated by MTC action prior to development of the plan, and \$32 billion (15%) to

"Discretionary Funds," which may be allocated to projects through the T-2035 Plan planning process. *Id.* at 38. This fiscal situation leaves no money to accomplish the aggressive changes necessary to meet these inflated targets.

Thus, MTC's originally-prepared, technically-supportable analysis demonstrates MTC's determination that ambitious, but achievable Regional Targets for the Bay Area are 5% in 2020 and 5% in 2035, and record evidence shows the impossibility of achieving the more ambitious scenarios MTC analyzed. However, apparently responding to pressure from ARB to recommend higher targets, and without understanding the consequences of doing so, MTC later submitted additional data suggesting the originally-proposed 5%/5% target may not be achievable because these targets are based on flawed data and are grossly unrealistic. See Attachment Y, MTC Presentation dated July 28.

After submitting the carefully-reasoned scenario analysis described above, MTC responded to ARB's June 2010 request to each MPO for additional information. See Attachment LL, MTC Follow-up Questions Revised: 6/1/10. One of the questions asked MPOs to explain whether its scenario analysis accounted for the impacts of the recession. In response, MTC stated that updated projections suggest the Bay Area will have approximately 157,000 fewer employed residents in 2035; incorporating this projection would result in an approximately 5% reduction in weekday pounds of GHG emissions per capita in 2020 and 2035 compared to what was analyzed in MTC's May 17 Memo. *Id.* at 1. This appears to be a key basis – as no other evidence is included in the record – for increasing the GHG reduction targets so substantially over MTC's original recommendations. Thus, while many observers thought that taking the recession and poor economy “into account” in target setting would result in incorporating realistic assumptions about the ability of regions to invest in land use strategies and employ pricing strategies to reduce GHG emissions, the opposite has occurred. MPOs are now actually *planning for fewer jobs and less economic growth as a principal GHG reduction “strategy.”*

Notwithstanding the questionable use of employment projections as a GHG emission-reduction strategy, MTC later determined it made factual errors resulting in vastly overstating the potential GHG reductions it could achieve. *Id.* Even when incorporating these extremely aggressive assumptions regarding potential effects of the recession on potential emissions (*i.e.*, assuming substantial reduction in employment levels), MTC determined the scenario recommended in its May 17 Memo would result in just a 3.3% per capita reduction in 2020 and 1.5% reduction in 2035, and the most aggressive (*i.e.*, unrealistic) scenario would result in just 10.5% reductions in 2035. *Id.*

Disregarding both this analysis, and the originally-submitted scenario analysis, on July 28, 2010, MTC adopted "Bay Area Principles for Establishing Regional Greenhouse Gas (GHG) Targets," which included endorsement of a 7% per capita GHG reduction by 2020 and a 15% reduction by 2035. See Attachment MM. These targets were adopted without any evidence of their feasibility. Indeed, MTC Commissioner Sue Lempert essentially acknowledged these goals were based more upon aspiration than technical feasibility: "...and then lastly, it's a goal and I really can't see the downsides of having a more aggressive goal and then for some reason not being able to make it. This was all thrashed out in the legislature and that's why there's an

alternative strategy. I don't see what we have to lose in upping the ante in 2035 and I would support the higher thing..." Attachment NN, Audio file from July 28, 2010 MTC Hearing.

Even more compelling evidence that the numbers were shifting during preparation of the FED, On August 5, 2010 MTC sent a memorandum demonstrating that its scenarios will achieve even less GHG reduction than MTC had previously represented to ARB. Attachment OO, MTC Memorandum to ARB, August 5, 2010. In fact, the information as of August 5, 2010 shows essentially zero GHG (and VMT) reductions in 2020 and 2035. *Id.* Thus, all evidence suggests that even MTC's originally-recommended targets of a 5% per capita GHG reductions in 2020 and 5% reduction in 2035 would be difficult to achieve. MTC's recommendation appears to have been politically – not empirically – driven. MTC's recommendation, and ARB's adoption of it, are arbitrary and capricious, and not supported by the factual record. In order to achieve the 2035 goal, the following highly implausible events would need to occur: (1) increase the population of San Francisco by 40,000-200,000; (2) increase the population of Oakland by 50,000; (3) increase the population of San Jose by 55-60,000; and (4) double round-trip auto commute costs from Fairfield to Oakland from and reduce the speed limit to 55 mph. Attachment X, July 9 ARB presentation slide 19 and Attachment Y, July 28 presentation slide 11, 12.

b) The Regional Targets Suggested for SCAG Are Not Supported by SCAG's Analysis, and Were Consequently Rejected by a Vote of SCAG's Regional Council on September 2, 2010.

ARB has proposed Regional Targets for SCAG of 8% in 2020 and 13% in 2035. Like MTC, in response to ARB's request for information from the MPOs, SCAG provided detailed analysis of five scenarios. This analysis demonstrates that "ambitious and achievable" targets are between 7 and 8% for 2020 and 5 and 6% for 2035. Attachment PP, SCAG Scenario Exercise at 1-2; Attachment GG, Appendix 4-3. SCAG also considered two other scenarios – Scenarios 4 and 5 – which reflect "the most aggressive improvements in transportation infrastructure and policy," and for Scenario 5, "optimization of land uses *beyond what has been vetted or supported by local jurisdictions.*" Attachment PP, SCAG Scenario Exercise at 2 (emphasis added). These scenarios would result in per capita GHG reductions between 9% and 10% in 2020, and 10 to 12% for 2035 – still shy of the 15% 2035 Regional Target recommended by ARB. Attachment GG at Appendix 4-3.

SCAG's analysis clearly demonstrates that the assumptions in Scenarios 4 and 5 are not currently achievable. *See, e.g.,* Attachment GG at Appendix 4-2 ("In brief, scenarios 2 and 3 represent ambitious and achievable GHG reductions for the SCAG region, while scenarios 4 and 5 are ambitious but not achievable for this cycle given funding constraints and other feasibility considerations."); Attachment PP, SCAG Scenario Exercise at 5 ("many assumptions [reflected in Scenario 5] are not feasible within the current political and financial climate."). SCAG also provided additional justification to ARB, defending the assumptions used – and the ambitious goals reflected – in the scenarios it submitted. *See* Attachment G, SCAG Aug. 4 letter. And, as

noted, Scenarios 4 and 5 would still result in lower GHG reductions than the recommended 2035 Regional Target.

In addition, as explained in response to ARB's follow-up questions, SCAG's scenarios fully account for the impacts of the recession. Attachment LL, SCAG Follow-up Questions Revised: 6/1/10 at 1. Thus, unlike in the case of MTC, discussed above, it cannot be said that SCAG needed to adjust its targets to reflect reduced employment levels likely to result from the economic downturn. This material also explains that the reason for the lesser reduction in 2035 relative to 2020 under SCAG's Scenarios 2 and 3 is the assumptions of future vehicle mix embedded in the modeling methodology. *Id.* at 2. Although SCAG recognized the model's assumptions regarding vehicle mixes may be flawed, it appropriately declined to engage in speculative analysis of how to change these assumptions. *Id.*

Despite SCAG's detailed analysis, including its additional justification, ARB arbitrarily and capriciously selected a 2035 target that does not reflect SCAG's assessment of what is actually achievable; and ARB provided no evidence refuting SCAG's analysis. The Staff Report acknowledges as much, noting that ARB staff selected a GHG reduction target of 13% because it is "more in line with the other major MPOs." Attachment CC, Staff Report at 24-25. However, the other targets are also set too high and, as ARB itself recognizes throughout the FED and Staff Report, what is an appropriate target for one region is not necessarily appropriate for another. *See, e.g.*, FED at 3 (explaining that Regional Targets account for different growth rates between MPO regions, and different early actions being taken to reduce GHG emissions). In addition, SB 375 builds in the ability to revisit Regional Targets at the appropriate time. Thus, if assumptions underlying the models used to project 2035 reductions need to be revised, this will occur at the appropriate time, based on supportable assumptions. In contrast, arbitrarily setting a target now, without support, is not appropriate and will result in significant environmental impacts.

SCAG's Regional Council apparently agrees that CARB's Targets are inappropriate, and on September 2, 2010, SCAG's Regional Council voted to reject CARB's proposed Targets. Instead, SCAG voted to recommend lower targets of 6% by 2020 and 8% by 2035. Although SCAG's staff had recommended supporting ARB's higher proposed Targets (SCAG Staff Report re: SB 375 Final Draft Regional Targets, September 2, 2010, prepared after ARB released the Targets but before the SCAG Regional Council voted on the Targets, and referred to herein as SCAG Staff Report), the SCAG Staff Report contains an analysis that was reverse engineered to support those Targets, and reflects a reluctance to change SCAG's original analysis. The SCAG Staff Report refers to the "new analysis" which simply reflects a retroactive manipulation of SCAG's original, unbiased analysis in an effort to demonstrate that the Targets are now "possibly achievable." Attachment QQ, SCAG Staff Report at 2; *see also* Attachment QQ, SCAG Staff Report, Attachment 1. Indeed, staff appears to have been reluctant to amend its initial, analytically supported characterization of scenarios that would achieve GHG emission reductions in line with the Regional Targets; unlike SCAG's original recommendation, which it determined was "ambitious and achievable," the SCAG Staff Report still refers to the higher targets as simply "ambitious." Attachment QQ, SCAG Staff Report at 2, 5.

As demonstrated in the SCAG Staff Report, staff employed a number of assumptions that, collectively, make enough changes to the reasonable assumptions SCAG previously

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employed in its scenarios analysis to enable SCAG to demonstrate a 13% reduction in 2035. Attachment QQ, SCAG Staff Report at 5; *see also* Attachment QQ, SCAG Staff Report, Attachment 1. These assumptions are wholly unrealistic and demonstrate the 2035 target cannot be attained. For example, in order to achieve the 2035 Regional Target, travel demand management measures would have to be imposed that result in a 174% increase in vanpools, a 144% increase in carpools, and a 20% increase in walking and biking, from the previous levels SCAG assumed; SCAG acknowledges that these goals come, not from its own region's analysis, but are based on analysis performed by the San Diego Association of Governments. Attachment QQ, SCAG Staff Report at 5. And, an additional 2.5% reduction in non-motorized transportation VMT would be required, along with an additional automobile operating cost of \$0.02/mile. *Id.* The Staff Report includes no demonstration of the feasibility of these changes, or any explanation of why the analysis in the original scenarios documentation was flawed. In fact, the SCAG Staff Report recognizes that achieving the Regional Targets would require SCAG's "partners and the State and Federal governments . . . to show commitment to implement and fund the underlying measures, or measures that achieve equivalent results." Attachment QQ, SCAG Staff Report at 5. However, SCAG's Staff Report provides no evidence demonstrating the "significant funding" and policy changes that would be required are actually realistic. *Id.* And, as discussed in further detail below, SB 375 provides no independent source of funding or policy making authority. Apparently SCAG's Regional Council agreed that these assumptions are unrealistic and cannot support the higher Targets when it voted to reject ARB's Targets. ARB's proposed adoption of the Regional Targets is arbitrary and capricious, and not supported by the original, well-supported analysis provided by SCAG.

Even with respect to achieving ARB's higher 2020 target of 8%, SCAG's analysis suggests this would require major investment that may not be realistic in the current economic climate. For example, to achieve Scenario 3, an additional \$15 billion must be invested in transit. Attachment QQ, SCAG Scenario Exercise at 3. In addition, this scenario assumes substantial investment in travel demand management, including non-motorized transportation systems. *Id.* Whether funding for these improvements will be available is highly questionable. The unreasonableness of these assumptions is reflected in SCAG Regional Council's vote to reject ARB's proposal and recommend a lower 6% target for 2020.

Thus, as with MTC, the original analysis and recommendations provided by SCAG to ARB reflect "ambitious but achievable" targets. Unfortunately, the ARB process that followed preparation of this sound analysis was driven by politics, not analytical integrity. ARB cites to no evidence demonstrating the Targets are feasible and therefore likely to achieve SB 375 goals. As a result, SCAG's Regional Council was forced to take the dramatic step of rejecting the Targets. The record reflects that the proposed Regional Targets are in excess of what is achievable, demonstrating that ARB's selection of the Targets is arbitrary and capricious.

3. There is No Evidence to Support the Targets Selected for Each Region.

There is no evidence in the FED to support the rationale for adopting ARB's Targets. There is no indication that the characteristics of each region, including regional climate change

patterns, existing land development patterns, existing and feasible new transit services, and other relevant characteristics, have been taken into consideration in selecting the Regional Targets.

ARB's failure to consider the regional characteristics in selecting GHG reduction targets is particularly well illustrated in the case of regions that face numerous development constraints, yet have been allocated increases in regional GHG emissions. For example, in Monterey growth is limited by the lack of water supply and continued litigation challenging the general plan. Attachment RR, Board of Supervisors Reviews Latest Version of Monterey County General Plan. In Santa Cruz and Santa Barbara, a number of growth control ordinances and organizations have limited growth for decades. Attachment SS, Santa Cruz Housing Forum Kicks Off; Attachment TT, 'Slow Growth' Has Come at a Cost in Santa Barbara. Despite significant growth constraints, the MPOs associated with these jurisdictions have been allocated GHG increases.

Further, the Staff Report acknowledges that certain GHG reduction targets were selected based on comparisons with the GHG reduction targets. In selecting the GHG reduction target for SCAG, the Staff Report notes that ARB staff selected a GHG reduction target of 13% because it is "more in line with the other major MPOs." Attachment CC, Staff Report at 24-25.

Accordingly, there is no indication that ARB has considered the characteristics of each region in selecting the Targets. ARB's selection of Regional Targets lacks evidentiary support and is arbitrary and capricious in light of the fact that ARB failed to consider the GHG reduction targets recommended, and supported by evidence, by the MPOs.

4. The Regional Targets Are Not Consistent with the Methodology and Goals of GHG CEQA Guidance Being Developed by Air Districts.

ARB's methodology in developing the Regional Targets is also inconsistent with the GHG CEQA guidance being developed by various air districts. Despite ARB's early indication that it would take a leadership role and develop guidance that could be used by lead agencies throughout the state in evaluating GHG impacts under CEQA, ARB has failed to follow through with this effort. Thus, air districts throughout the state struggling to fill this vacuum have been developing CEQA GHG guidance. Not surprisingly, the result of this disjointed effort has been a hodge podge of inconsistent approaches. However, ARB has ignored the work by air districts in setting the targets.

Some districts, like the San Joaquin Valley Air Pollution Control District (SJVAPCD) have adopted guidance that utilizes methodology and goals consistent with the Scoping Plan. See Attachment UU, Guidance for Valley Land Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA at 5 (describing use of BAU metric and 29% below BAU significance threshold). In contrast, as detailed above, the Regional Targets reflect neither the goals, nor the methodology utilized in the Scoping Plan.

Other agencies, like the Bay Area Air Quality Management District (BAAQMD) employed a wholly different methodology and attempted to determine what level of emission

reductions must be achieved within a particular air basin, and structured the significance threshold to achieve these reductions. *See* Attachment VV, California Environmental Quality Act: Air Quality Guidelines (BAAQMD Guidelines), Appendix D at D-14 to D-16. The Regional Targets do not reflect BAAQMD's goals or methodology either.

In fact, the Regional Targets would produce contradictory results to the BAAQMD Guidelines. As many interested parties have noted, the BAAQMD Guidelines will likely result in a disinvestment in infill development within the Bay Area. *See* Attachment WW, Letters submitted to BAAQMD re BAAQMD Thresholds. Specifically, the "Community Risks and Hazards" threshold places such extreme limitations on potential exposure to TACs that the cost of infill development will become prohibitive, especially for affordable housing. Attachment WW. The type of dense, urban development that would have to occur to comply with MTC's Regional Target would preclude inclusion of mitigation measures such as setbacks and tree-planting that would ordinarily be imposed to address TAC risks. In addition, the new thresholds, therefore, are not compatible with the type of extremely intense urban development that would be required to comply with MTC's Regional Target.

Thus, the Regional Targets are not consistent with the goals of these various guidance documents, and the methodology utilized by ARB is not aligned with the approaches employed by the air districts. The Regional Targets do not employ the sound, Scoping Plan-derived approach utilized by the SJVAPCD, and are at odds with the requirements of the BAAQMD Guidelines. ARB's failure to align the Regional Targets with CEQA guidance being developed by air districts leads to questions about the methodology and goals employed by ARB and highlights the agency's failure to take a leadership role in developing statewide CEQA GHG guidance.

5. Regional Targets are Inconsistent with the Recommendations of the Regional Targets Advisory Committee.

As noted above, the FED duplicated analysis from the RTAC Report regarding potential beneficial impacts and other potential significant impacts, demonstrating ARB's abdication of responsibility to consider the actual environmental impacts of the Regional Targets in the FED.

In contrast, the Regional Targets themselves are inconsistent with the recommendations of the RTAC. The RTAC Report was compiled after many months of stakeholder collaboration and public input to guide ARB's development of the Regional Targets. The RTAC Report thoughtfully laid out the process and methodology that ARB should undertake in developing the Regional Targets. There are several items that ARB did not consider consistent with the RTAC Report. For example, the RTAC Report called for consideration of regional variation in the level of sophistication in modeling and use of BMPs. Attachment T, RTAC Report at 8. The RTAC report did not call for varying the Targets themselves based on levels of MPOs sophistication - the Targets should be based on what is achievable in each region and the Regional Targets do not explain how the variation correlates to achievability. The RTAC Report also called for flexibility in achieving Targets. Attachment T, RTAC Report at 23. The flexibility included development creditable strategies and accurate methods. *Id.* The grossly inflated pricing that is

necessary to meet the Regional Targets is just one example of how means to achieve the Targets are neither creditable nor accurate, and are therefore arbitrary and capricious.

Further, the RTAC recommendations stress the need for a transparent, public participation and making the underpinnings of the Targets clear and understandable to the public. Attachment T, RTAC Report at 9, 16, 31. The Targets are not clear even to development experts, let alone the public. The process that RTAC laid out included seven steps, including a step for ARB and MPOs to work together to understand the MPOs final recommendations. It does not appear that meaningful coordination occurred given the MPOs submitted their recommendations days before or even after ARB's publication of the Targets. ARB's failure to follow the RTAC recommendations is yet another example of its failure to consider relevant factors and demonstrate a rational basis for selecting Targets. ARB's selection of the Targets is therefore arbitrary and capricious.

V. Conclusion

For all of the foregoing reasons, CBIA suggests that ARB not adopt the proposed Regional Targets because to do so would violate numerous state laws and subject ARB to significant litigation risk. ARB should review the information provided by the MPOs, select achievable Regional Targets and then consider the environmental impacts of those targets and alternatives to those targets, consistent with the requirements of CEQA and the APA.

Sincerely,



Richard Lyon
California Building Industry Association

CBIA Letter to ARB

Index of Attachments

Attachment x	Title	Link	Saved to System?
Attachment A	Memorandum to ARB from the Executive Directors of the 4 Largest MPOs, May 18, 2010, p. 18	www.arb.ca.gov/cc/sb375/mpo/prelimreport.mtc.sacog.sandag.scag.pdf	Yes
Attachment B	MTC Alternative Scenario Data Request	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/alt_scenario_mtc72710.pdf	Yes
Attachment C1 and C2	ABAG Housing Statistics, 2007 & 2009	Sent via email	Yes
Attachment D	Sacramento Blueprint	http://www.sacregionblueprint.org/implementation/pdf/blueprint-book.pdf	Yes
Attachment E	California Environmental Quality Act Functional Equivalent Document, App. J to the Scoping Plan, Ch. IV	http://www.arb.ca.gov/cc/scopingplan/document/appendices_volume3.pdf	Yes
Attachment F	Functional Equivalent Document Renewable Electricity Standard	http://www.arb.ca.gov/regact/2010/res2010/res10e.pdf	Yes
Attachment G	Letter from Hasan Ikhata, SCAG, to Mary Nichols, ARB, Aug. 4, 2010	http://www.arb.ca.gov/cc/sb375/mpo/scag/ghg_measures_scag8410.pdf	Yes
Attachment H	City of Roseville, Office of Economic Development, Demographic, Development and Employment Profile 2007	http://www.roseville.ca.us/civica/filebank/blobdload.asp?BlobID=10267	Yes
Attachment I	City of Rancho Cordova, General Plan: Economic Development Element	http://www.cityofranchocordova.org/Index.aspx?page=298	Yes
Attachment J	Cost of AB 32 on California's Small	http://www.sbaction.org/get_resource.php?table=resource_kmqap4_18z4ys&id=kmqaq1	Yes

	Businesses	1ed1wo.	
Attachment K	Per Capita Energy Statistics	http://www.statemaster.com/graph/ene_ele_pow_ind_emi_co2_percap-industry-emissions-co2-per-capita	Yes
Attachment L	Greenness of Cities	http://www.hks.harvard.edu/rappaport/downloads/policybriefs/greencities_final.pdf	Yes
Attachment M	EPA Guidance: Improving Air Quality	http://www.epa.gov/OMS/stateresources/policy/transp/landuse/r01001.pdf	Yes
Attachment N	Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions	http://www.aqmd.gov/ceqa/handbook/mobile_toxic/mobile_toxic.html	Yes
Attachment O	Air Quality and Land Use Handbook: A Community Health Perspective	http://www.arb.ca.gov/ch/handbook.pdf	Yes
Attachment P	California Department of Education, School Site Selection and Approval Guide	http://www.cde.ca.gov/ls/fa/sf/schoolsiteguide.asp	Yes
Attachment Q	BAAQMD Screening Tool: Cancer Risk	(Sent by Nicholas)	Yes

Attachment	Title	Link	Saved to System?
Attachment R	San Francisco Bay Regional Water Quality Control Board, Municipal Regional Stormwater NPDES Permit, Order No. R2-2009-0074	http://www.swrcb.ca.gov/public_notices/petitions/water_quality/docs/a2057n_sanmateo_cnty/a2057npetitionpart2.pdf	Yes
Attachment S	State Water Resources Control Board, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ	http://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf	Yes
Attachment T	Recommendations of the Regional Targets Advisory Committee (RTAC) Pursuant to Senate Bill 375 (RTAC Report)	http://www.arb.ca.gov/cc/sb375/rtac/report/092909/finalreport.pdf	Yes

Attachment U	Memorandum to MTC from S. Heminger, May 17, 2010	Sent via email	Yes
Attachment V	California Electric Magnetic Fields Program, a project of the California Dep't of Health Services and the Public Health Institute (1999)	http://www.ehib.org/emf/shortfactsheet.PDF	Yes
Attachment W	July 20, 2010 letter re: Social Equity in SB 375 Target Setting	http://www.climateplanca.org/CARB%20Social%20Equity%20Letter_FINAL.pdf	Yes
Attachment X	MTC Presentation July 9, 2010, Slide 19	http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1521/7_9_10_PC_Targets_Presentation.ppt	Yes
Attachment Y	MTC Presentation July 28, 2010, Slide 11	http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1531/7_28_10_Commission_GHG_Targets_Presentation_v1.pdf	Yes
Attachment Z	MPO RTP and EIRs	<p><u>SACOG</u></p> <p>1) MTP "MTP2035": http://www.sacog.org/mtp/2035/final-mtp/</p> <ul style="list-style-type: none"> There is not a single pdf file with the entire MTP. The link takes you to a webpage where all of the chapters and appendices are separated into individual links. <p>2) EIR (156 Pages): http://www.sacog.org/mtp/2035/finaldocs/eir/Final%20EIR.pdf Website Link: http://www.sacog.org/mtp/2035/final-eir/</p> <p><u>MTC</u></p> <p>1) RTP "T2035" (160 Pages): http://www.mtc.ca.gov/planning/2035_plan/FINAL/T2035_Plan-Final.pdf Website Link: http://www.mtc.ca.gov/planning/2035_plan/</p> <p>2) EIR (483 Pages): http://www.mtc.ca.gov/planning/2035_plan/EIR/final/MTC_Final-EIR-web.pdf Website Link: http://www.mtc.ca.gov/planning/2035_plan/EIR.htm</p>	Yes

		<p><u>SANDAG</u></p> <p>1) RCP "Regional Comprehensive Plan 2004" (426 Pages): http://www.sandag.org/uploads/publicationid/publicationid_1094_3362.pdf <ul style="list-style-type: none"> RCP only goes out to 2030 and development is underway on 2050 RTP. Website Link: http://www.sandag.org/index.asp?projectid=1&fuseaction=projects.detail</p> <p>2) EIR (352 Pages): http://www.sandag.org/uploads/publicationid/publicationid_1083_3275.pdf Website Link: Same as above.</p> <p><u>SCAG</u></p> <p>1) RTP "2008 RTP" (220 Pages): http://www.scag.ca.gov/rtp2008/pdfs/finalrtp/f2008RTP_Complete.pdf Website Link: http://www.scag.ca.gov/rtp2008/index.htm</p> <p>2) EIR(655 Pages): http://www.scag.ca.gov/RTPpeir2008/pdfs/final/2008Final_RTPpeir_addendumSections1-7.pdf Website Link: http://www.scag.ca.gov/environment/eir.htm</p>	
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Attachment	Title	Link	Saved to System?
Attachment AA	SCAG Regional Council Meeting	http://www.scag.ca.gov/spotlight/sep10.htm	Yes
Attachment BB	Climate Change Scoping Plan: A Framework for	http://www.arb.ca.gov/cc/scopingplan/document/adopted_scoping_plan.pdf	Yes

	Change		
Attachment CC	ARB, Staff Report: Regional Greenhouse Gas Emission Reduction Targets for Automobiles and Light Trucks Pursuant to Senate Bill 375	http://arb.ca.gov/cc/sb375/staffreport_sb375080910.pdf	Yes
Attachment DD	Comments on the ARB's Updated Economic Impacts Analysis	http://www.climatechange.ca.gov/eaac/documents/eaac_reports/2010-03-23_EAAC_REPORT_Appendix.pdf	Yes
Attachment EE	Proposed SB 375 Greenhouse Gas Targets: Documentation of the Resulting Emission Reductions Based on MPO Data	http://arb.ca.gov/cc/sb375/mpo.co2.reduction.calc.pdf	Yes
Attachment FF	July 16, 2010 Memorandum from Andy Henderson, BIA of Southern California, Inc., to Terry Roberts, ARB	email	Yes
Attachment GG	MTC Memo dated May 17, 2010	<u>Sent</u> by email	Yes
Attachment HH	Transportation 2035 Plan Final Environmental Impact Report, Findings and Facts in Support of Findings	http://www.mtc.ca.gov/planning/2035_plan/EIR/final/MTC_FEIR-web.pdf	Yes
Attachment II	MTC Presentation dated August 13, 2010	Sent via email	Yes
Attachment JJ	MTC Transportation 2035 Plan for the San Francisco Bay Area (T-2035 Plan)	http://www.mtc.ca.gov/planning/2035_plan/FINAL/T2035_Plan-Final.pdf	Yes
Attachment KK	MTC July 28 Presentation	<u>July</u> 28 presentation	No
Attachment LL	MTC Follow-up Questions Revised: 6/1/10	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/mtc.abag.responses.pdf	Yes
Attachment MM	Bay Area Principles for Establishing Regional Greenhouse Gas (GHG) Targets	http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1531/7a_Res-3970_Revised_7-28-10.pdf	Yes

Attachment NN	Audio file from July 28, 2010 MTC Hearing	http://www.mtc.ca.gov/meetings/archive/	Yes
Attachment OO	MTC Memorandum to ARB, August 5, 2010	http://www.arb.ca.gov/cc/sb375/mpo/mtc_abag/mtc.email0801510.pdf	Yes
Attachment PP	SCAG Scenario Exercise	http://www.scag.ca.gov/pptac/pdfs/agendas/051110/pptac051010-5-1-handout.pdf	Yes
Attachment QQ	SCAG Staff Report re: SB 375 Final Draft Regional Targets	Sent via email	Yes
Attachment RR	Johnson, J <i>Board of Supervisors Reviews Latest Version of Monterey County General Plan</i>	http://www.montereyherald.com/growth/ci_15949157?source=pkg .	Yes
Attachment SS	Lussenhop, J., <i>Santa Cruz Housing Forum Kicks Off</i> . SantaCruz.com	http://news.santacruz.com/2010/01/13/santa_cruz_housing_forum_kicks_off	Yes
Attachment TT	Rabin, J.L. and Kelley, D. <i>'Slow growth' Has Come at a Cost in Santa Barbara</i>	http://articles.latimes.com/2006/mar/06/local/me-slowgrow6 .	Yes
Attachment UU	Guidance for Valley Land Use Agencies in Addressing GHG Emission Impacts for New Projects Under CEQA	http://www.valleyair.org/programs/CCAP/12-17-09/3%20CCAP%20-%20FINAL%20LU%20Guidance%20-%20Dec%2017%202009.pdf .	Yes
Attachment VV	California Environmental Quality Act: Air Quality Guidelines (BAAQMD Guidelines)	http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_June%202010.ashx .	Yes
Attachment WW	Letters submitted to BAAQMD re BAAQMD Thresholds	Sent by email	Yes



September 17, 2010

James Goldstene
Executive Officer
California Air Resources Board
Sacramento, CA
95812

Subject: Kern Council of Governments Support for the 2 and 5% Targets

Dear Mr. Goldstene:

On September 16, 2010 the Kern COG Board approved the enclosed response to the August 9, 2010 ARB staff report on SB 375 targets, which was uploaded to the ARB website on September 13th. In addition, the Kern COG Board instructed staff to coordinate on the development of an 8-MPO target that includes east Kern.

The Kern COG Board approved staff's recommendation to support the San Joaquin Valley Air Pollution Control District (SJVAPCD) Board recommendation for the 2% by 2020 and the 5% by 2035 placeholder targets. The SJVAPCD Board approved on September 16th.

We respectfully urge you to consider the recent actions taken by our Board and the SJVAPCD Board.

Sincerely,


For Ronald E. Brummett
Executive Director

CC: Doug Ito, Jeff Lindberg
Enclosure

SB 375 Target Setting

Kern COG Response to 8-9-10 ARB Staff Report – Version 3

The following comments are being provided to the California Air Resources Board and will be incorporated into a response letter to be approved by the Kern COG Board on September 16, 2010. The CARB staff report is available at <http://www.arb.ca.gov/cc/sb375/sb375.htm>.

- **Valleywide Target Precedent** - Kern COG is seriously concerned that a single placeholder target for the "Valley" will preclude the option to establish targets for subregions or a single MPO in the 8-county area. Half of the Kern Region lies in the East Kern Air Basin, and is NOT in the "Valley." The Kern region is committed to striving to work with the other 7 Valley MPOs to develop a single 8-county or multi-county target(s), however, if coordination is not possible, the precedent the proposed Valley placeholder target sets needs to be clarified. **Recommendation:** Provide separate provisional target(s) to MPO(s) from the San Joaquin Valley 8-County region that are unable to coordinate with the rest of the Valley. Base targets on modeling information specific to the each MPO.
- **10% Reduction by 2035 is Too Ambitious** – As pointed out in the 8-9-10 Staff Report this target is way beyond any modeling provided from any Valley MPO to date. Kern bears little resemblance to the big four major metropolitan areas, and basing targets for Kern on what other regions can do is arbitrary, unfair and could have serious repercussions to state environmental, economic and equity goals. For example the rural nature of the San Joaquin Valley and lack of mass transit options make emissions savings difficult to achieve. **Recommendation:** Provide provisional targets that reflect local modeling and are NOT based on comparison to other regions.

On April 23, 2010 Kern COG provided to ARB modeling and technical information as required by SB 375 Government Code Section 65080 (b)(2)(A)(ii). These results are for an alternative land use scenario that showed a .5 percentage point reduction when compared to the baseline 2035 scenario using the same methodology as used in the ARB 8-9-10 staff report:

Per-Capita Target Based on Technical Information Provided to ARB (4/23/10) by the Kern MPO

	2020	2035
Kern COG	2% Decrease	8% Increase

(methodology excludes 100% XX thru county travel)

The 5% decrease by 2020 and 10% decrease by 2035 proposed by ARB staff is NOT based on the technical information provided by the MPO. The ARB staff proposal ignores the local information adopted as part of an extensive and open

public process for the Kern region. The technical information provided are consistent to similar sized MPOs outside the Valley area such as the Monterey Bay region which is showing a 14% increase by 2035. The Kern region and the 7 other Valley MPOs should be treated like the 6 other MPOs where the targets were based on the modeling and technical information they provided.

- **Placeholder Targets** - Kern COG supports the concept of the placeholder targets with provisional targets to be provided by 2012. This will allow more time to enhance the modeling to more accurately reflect local conditions on what is ambitious, yet achievable as well as interregional travel and strategic employment areas. **Recommendation:** New modeling enhancements underway may not be ready by 2012 due to the limited modeling resources of the Valley MPOs. Allow an additional update of information to the provisional targets prior to their final adoption in 2014 or the next RTP cycle.
- **Subarea Targets for MPOs Split by Air Districts** - Kern County is a diverse region governed by two separate air districts/basins. The East Kern Air District is not in the San Joaquin Valley. **Recommendation:** If an MPO is split by air districts, allow the MPO to provide information during the provisional update for creating separate targets for each air district sub area similar to the process in the SCAG region. For example, the San Joaquin Valley portion could apply to the San Joaquin Valley Target.
- **Strategic Employment Areas** - Kern COG is dominated by rural resource land uses. These areas contain employment activities strategic to the state climate change and other goals. The RTAC recommended consideration for Strategic Employment Areas (such as military, wind energy, prisons, etc.) in the target setting process. There is no mention of this in the staff report. **Recommendation:** Allow not only an exemption for Strategic Employment Areas but a credit because of their essential contribution to climate change and other state goals.
- **Alternative Numeric Method to Percent Per Capita CO2 Reduction** – The percent per capita method creates problems for smaller high growth MPOs that can be subject to dramatic percent per capita changes because their population may be doubling every 30-40 years. It is important not to force an APS on a region that can show a significant savings in CO2 emissions compared to the future year baseline but are unable demonstrate compliance with their approved provisional target on a percent per capita basis. This could result in the voluntary APS strategies being ignored by the local governments in the region, wiping out the potential emissions savings demonstrated by the MPO's proposed SCS that is considered ambitious and achievable by the local MPO. MPO's should be allowed to prepare an SCS if their target meets one of the following requirements:
 - a. **Current Method** - The Percent Per Capita CO2 Reduction from 2005 baseline meets or is better than the MPO's approved target.

Or

- b. Alternate Method (10% Reduction in CO₂) - The MPO's proposed SCS shows a CO₂ emissions 10% below the statewide average, and the numeric pounds of CO₂ per capita is 10% below the region's 2020 and 2035 baseline emissions (pre-Pavely/LCF). For example, if the average SCS is 20 pounds per person in 2035, an MPO would need to show that it was below 18 pounds per person. This method should be considered as an addition to Section IV. of the Functionally Equivalent Document.

This alternative method reflects the RTACs recommendation for a substantial improvement in CO₂ emissions.

- **Pavley/LCF** - 2010 Provisional Targets do not include Pavely and Low Carbon Fuels standards as required by SB 375. **Recommendation:** Provide Targets that include the emission savings provided by technology gains from Pavely and Low Carbon Fuels efforts statewide.

Kern COG is supportive of CARBs efforts to work with the 8-Valley MPOs and to provide more time to improve information being provided in your bottom-up approach to target setting.

Attachment 4

Approved Regional Greenhouse Gas Emission Reduction Targets

MPO Region	Targets *	
	2020	2035
SCAG	-8	-13
MTC	-7	-15
SANDAG	-7	-13
SACOG	-7	-16
8 San Joaquin Valley MPOs	-5	-10
6 Other MPOs		
Tahoe	-7	-5
Shasta	0	0
Butte	+1	+1
San Luis Obispo	-8	-8
Santa Barbara	0	0
Monterey Bay	0	-5

* Targets are expressed as percent change in per capita greenhouse gas emissions relative to 2005.